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GOVERNMENT IN THE SUNSHINE ACT: HISTORY AND RECENT ISSUES

A REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NOVEMBER 1989

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I. INTRODUCTION

In 1913, Supreme Court Justice Louis Brandeis wrote:

> Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.

Justice Brandeis could have just as well applied these remedies to the governmental process. Democratic self-government and an informed citizenry go hand in hand; they both require open conduct of the public's business. Only with such openness can the public determine whether governmental decisions are just and fair.

The Government in the Sunshine Act, Public Law 94-409, was signed into law on September 13, 1976. First introduced in Congress by Senator Lawton Chiles of Florida, in the aftermath of the Watergate scandal, the Sunshine Act seeks to assure the openness of our governmental processes and to restore public confidence in those processes. The Act requires that all meetings of multimember Federal agencies be open to the public, providing certain exemptions from openness requirements. The Act allows agencies to close meetings where discussion concerns (1) national security matters classified as secret by Executive order; (2) an agency's internal personnel rules and practices; (3) matters specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information; (5) formal censure or criminal accusation; (6) personal information that would constitute an invasion of privacy; (7) investigatory files compiled for law enforcement purposes; (8) information relating to regulation or supervision of financial institutions; (9) information (a) the premature disclosure of which would lead to financial speculation or (b) significantly frustrate proposed agency action; (10) issuance of an agency subpoena or agency participation in a civil action.

Even where a meeting may be closed under one the exemptions, the Act's "presumption of openness" requires agencies to open meetings if the public interest so requires. The Sunshine Act also requires agencies to give timely notice of any meetings, open or closed, and to make publically available adequate transcripts or minutes of every closed meeting. The Sunshine Act is the most comprehensive anti-secrecy measure affecting Federal agencies to become law since the Freedom of Information Act of 1966.

The Sunsine Act's basic principle is that government belongs to the people. In passing the Sunshine Act, Congress sought to allow the public, and the press, to observe their government at work. As the Act states, the public is entitled to the "fullest practible information" regarding the decisionmaking process of the Federal government. The public has a right to know not only what its government decides, but why and by what process. The Act seeks to reaffirm that government is part of the people, not a part from the

people. Citizens simply cannot hold government officials accountable if they do not know what those officials are doing.

The Sunshine Act has had a mixed record of success among the various Federal agencies. As Senator Chiles stated during the 1975 Senate debate on the Sunshine Act (S. 5) Conference Report, which became law, the Act "requires agencies to make adjustments in the way they do business." He commented that "new attitudes" would have to be learned and old ones changed.

Some agencies have chosen to operate under a shadow of secrecy, disregarding the spirit of the law. Agency chairmen have often played the primary role in assuring the open conduct of agency business. In early 1977, three months after the Act became law, Common Cause conducted a study of agencies covered by the Act. The study cited a "strong tendency" on the part of federal agencies to close their meetings under one of the Act's ten exemptions, despite the Act's clear presumption in favor of openness. The study found that less than forty percent of all agency meetings were entirely open to the public. After eleven years, agencies have maintained roughly the same record. However, as Common Cause pointed out, the record of compliance has had as much to do with agency attitudes regarding openness and accountability in government as it does with the legitimate use of the Sunshine Act's exemptions.

Agencies failing to adopt "new attitudes" have made deliberate attempts to skirt the law. The Interstate Commerce Commission closed a June 28, 1977 meeting to determine tariff rates on oil transportation in the Alaska pipeline—clearly an issue of national importance that warranted open discussion. Later, the Commission stopped meeting entirely. The Legal Service Corporation, in an episode discussed in this Report, deliberately changed the date and site of a meeting to avoid public opposition to (or knowledge of) proposed regulations, neglecting to provide proper notice of the change as required by law. Agencies have moved too quickly to close meetings that could remain open, or have invented technicalities or procedural points upon which to hang their preconceived desire to shut out the public. Agencies have also used notation voting procedures for other than routine issues.

Many agencies, however, have had little problem complying with the Act. Between 1979 and 1984, the Council on Environmental Quality, the Tennessee Valley Authority, the National Mediation Board and the U.S. International Trade Commission held all or most of their meetings in an entirely open forum. After first concluding the government would "collapse" if the Sunshine Act became law, the Federal Reserve Board later agreed the Act's requirements are workable and do not impair essential agency operations.

The flow of information to the interested public has increased since the Sunshine Act became law. The Act serves as a landmark in letting citizens of this country see and participate in the important processes of government which directly affect their lives.

The Sunshine Act is not perfect; no law is. It has been attacked as having diminished the collegial character of agency decision-making and perhaps, to a certain extent, it has. Nevertheless, Congress—in enacting openness requirements—was not acting to serve

the interests of Federal agencies but rather the interest of the public. Diminished collegial decisionmaking is a small price to pay when weighed against the public's right to know.

As Senator Chiles stated in 1985, the battle to keep the public informed is never over. It must be waged on a continuing basis. The need for open government is vital, and the public and the press must be vigilant in protecting it. Congress must act as a watchdog to prevent agencies from slipping. Government will be better for it. This oversight is absolutely essential if Justice Brandeis' remedy is to serve us all.

Purpose of Report

The purpose of this Report is to examine recent issues and court rulings that have tested the Sunshine Act. The Report includes text of a 1988 General Accounting Office Report measuring general agency compliance with the Act and Congressional Research Service studies detailing agency compliance over many years. The Sunshine Act's history and importance are noted in supplemental texts and articles included in this Report.

II. THE GOVERNMENT IN THE SUNSHINE ACT

Public Law 94-409
94th Congress, S. 5
September 13, 1976

An Act

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act". Government in the Sunshine Act. 5 USC 552b note.

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. 5 USC 552b note.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings 5 USC 552b. Definitions.

"(a) For purposes of this section— 5 USC 552.

"(1) the term 'agency' means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

"(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the

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interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; 5 USC 552.

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing. 5 USC 554.

"(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Recorded voting.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. Copies, availability.

"(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time. Meeting closure, regulation. Public announcement.

"(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time. Scheduling, public announcement.

"(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The Scheduling changes, public announcement.

subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

Scheduling notice, publication in Federal Register.

"(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

Closed meetings, certification.

"(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency.

Transcripts, recordings or minutes.

The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

Public availability.

"(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

Retention.

The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

Regulations. Notice, publication in Federal Register.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements

of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections. Judicial proceeding.

"(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section. Jurisdiction. Civil actions. Relief.

"(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose. Inquiry.

"(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States. Litigation costs, assessment.

"(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency Report to Congress.

meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

5 USC 552.

44 USC 3301.

"(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.".

5 USC 552a.

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

5 USC prec. 500.

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

SEC. 4. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

"(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge. Applicability.

"(2) This subsection does not constitute authority to withhold information from Congress.".

(b) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.". "Ex parte communication."

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.". 5 USC 557.

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings),".

(b) Section 552(b)(3) of title 5, United States Code, is amended to read as follows:

"(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;".

(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where 5 USC app. I,

the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.".

EFFECTIVE DATE

5 USC 552b note.

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect 180 days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

Approved September 13, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94- 880, Pt. I and No. 94-880, Pt. 2, accompanying H. R. 11656 (Comm. on Government Operations) and No. 94-1441 (Comm. of Conference).

SENATE REPORTS: No. 94-354 (Comm. on Government Operations), No. 94-381 (Comm. on Rules and Administration) and No. 94-1178 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Nov. 5, 6, considered and passed Senate.

Vol. 122 (1976): July 28, considered and passed House, amended, in lieu of H. R. 11656.

Aug. 31, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 38 (1976): Sept. 13, Presidential statement.

III. LEGISLATIVE HISTORY

GOVERNMENT IN THE SUNSHINE ACT (PUBLIC LAW 94-409)

The Government in the Sunshine Act was initially introduced as S. 3881 on August 9, 1972, by Senator Lawton Chiles, and referred to the Senate Committee on Government Operations. A companion bill, H.R. 16450, was offered in the House by Representative Dante Fascell on August 17. No legislative action was taken during the 92nd Congress, although there was informal consideration of the bill.

Senator Chiles offered a more developed and comprehensive Sunshine proposal in the 93rd Congress. Introduced on January 9, 1973 with 17 bipartisan cosponsors, the measure (S. 260) contained two titles, one relating to congressional committee proceedings and one governing executive branch meetings. Representative Fascell, having again introduced the earlier Sunshine legislation (H.R. 4) in January, offered an enlarged version of S. 260 in the House, H.R. 10000, on August 3. The House bill had nearly 50 cosponsors from both political parties.

Expansion of the original measure included addition of a policy definition of "national security" as utilized in the bill; more detailed procedure regarding opening and closing meetings of both congressional committees and multi-member Executive branch administrative agencies; inclusion of certain types of law enforcement information, trade secrets, and financial or commercial information as matters exempt from mandatory disclosure in open meetings; and a new provision prohibiting ex parte communications between agency decisionmakers and all outside persons where the purpose of the contact is to discuss matters being formally adjudicated by the agency.

During the summer of 1973, the Subcommittee on Reorganization, Research and International Organizations, chaired by Senator Ribicoff, solicited the views of public administration experts, legal scholars, representatives of the media, State officials and professional organizations. (See Government in the Sunshine: Responses to Subcommittee Questionnaire, Senate Government Operations Committee Print, 93rd Congress, 1st Session. U.S. GPO 1974) An overwhelming majority of the responses strongly supported Government in the Sunshine legislation. Three days of hearings on S. 260 were held by the Subcommittee, on May 21 and 22, and October 15, 1974, under the direction of Senator Chiles.

The bill was reintroduced by Senator Chiles as S. 5 on January 15, 1975, at the start of the 94th Congress, with 24 cosponsors from both parties.

On May 12, 1975, the Subcommittee on Federal Spending Practices, Efficiency and Open Government, meeting in open session, unanimously approved an amended version of S. 5. On July 9, the

full committee reported favorably S. 5, as further amended, by a unanimous vote.

Certain procedural requirements in the original bill regarding the closing of meetings were modified. Additionally, the scope of the bill was modified to cover only those multimember agencies headed by officials appointed by the President with the advice and consent of the Senate. The definition of "meeting" was redrafted to exclude many discussions which are informal in nature. Further grounds justifying a closed meeting were also added. Rather than requiring an agency to maintain a transcript or electronic recording of all meetings, the bill was also amended to require a verbatim transcript of only those meetings closed to the public. Provisions were adopted clarifying the relationship between the Sunshine provisions and the Freedom of Information Act and Privacy Act.

Given the bill's provisions covering congressional procedures and ex parte communication, S. 5 was referred to the Committee on Rules and Administration and the Committee on the Judiciary, where no further hearings were held. The Rules Committee reported the bill on September 18 by a unanimous vote, removing the congressional title (title I), but later reported a resolution amending Senate rules regarding open committee meetings. The latter resolution passed the Senate shortly thereafter. The Rules Committee Report was also filed on behalf of the Judiciary Committee, which agreed to treat as original text on the floor the Rules Committee version of the bill.

The bill passed the Senate on November 6, 1975 by a vote of 94–0, with two technical amendments.

In the House, a companion to S. 5 was first introduced (H.R. 466) by Representative Don Fuqua on January 14, 1975. Representative Fascell later introduced two modified versions of Senator Chiles' bill. The first (H.R. 5075), introduced March 18, omitted the congressional title. The second (H.R. 9868), introduced on September 26, reflected changes in the bill as reported by the Senate Government Operations Committee.

Representative Bella Abzug, Chairwoman of the Subcommittee on Government Information and Rights of the Committee on Government Operations introduced a revised version of the Fascell measure (H.R. 10315). Both bills were referred to this Subcommittee for consideration. Following two days of hearings before the Subcommittee on November 6 and 12, Representative Abzug introduced another revised version of the legislation on December 4. After markup, the Subcommittee version was offered as a clean bill (H.R. 11656) by Representative Abzug and 24 cosponsors on February 3, 1976. The measure was ordered reported by the full Government Operations Committee on March 2 by a vote of 32–7. The Judiciary Committee favorably reported the proposal on April 6, as amended, following hearings by the Subcommittee on Administrative Law and Governmental Relations.

On July 28, the House passed the bill by a vote of 390–5. Prior to final passage, the House agreed to an amendment in the nature of a substitute incorporating all recommendations of the panels reporting the proposal. Other amendments were agreed to, including one eliminating the requirement for transcripts of closed meetings and one applying the bill's provisions to meetings of advisory com-

mittees. Subsequently, this passage was vacated, and S. 5 was passed in lieu of the House bill after being amended to include the language of the House bill as enacted.

On August 5, the conference committee, chaired by House Government Operations Committee Chairman Jack Brooks, met to reconcile the House and Senate bills. Among the principal differences settled in conference was the definition of "meeting."

The Senate version defined meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint dispostion of official agency business." The House version defined meeting as "a gathering to jointly conduct or dispose of agency business by two or more but at least the number of individual agency members required to take action on behalf of the agency." The compromise version defined meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." The joint statement of the conference committee noted that the definition of meeting was to include conference telephone calls if they involved the requisite number of members and otherwise fulfilled the definition.

The conference also resolved that, unless otherwise provided in the statute, every portion of every meeting of an agency within the scope of the Sunshine Act, including a subdivision, shall be open to the public. The conference version provided that transcripts, verbatim recordings, or in some cases detailed minutes, must be made of all meetings closed to the public, and that those transcripts, recordings or minutes governed by the Sunshine Act and not exempt from disclosure by the Act must be made promptly available to the public.

The conference report was filed in the House on August 26 and in the Senate the following day. On August 31, the House agreed to the conference report by a 384–0 vote. The Senate agreed to it by voice vote.

The President signed the bill (Public Law 94–409) on September 13, 1976.

Oversight hearings on the Government in the Sunshine Act were held November 29, 1977, June 13 and August 4, 1978, by the Senate Subcommittee on Federal Spending Practices and Open Government and April 19, 1988, by the Senate Subcommittee on Federal Spending, Budget and Accounting.

IV. RECENT ISSUES

A. Recommendation of the Administrative Conference of the United States

On June 28, 1984, the Administrative Conference of the United States adopted a recommendation (No. 84-3) intended to improve administration of the Government in the Sunshine Act. The recommendation followed a series of reports prepared by Professor David Welborn of the University of Tennessee and commissioned by the Administrative Conference. The final report was issued in June 1984. The report, entitled "Implementation and Effects of the Federal Government in the Sunshine Act," was largely based on a survey distributed to members and senior staff of 26 agencies covered by the Sunshine Act, and to those groups thought to be beneficiaries of the Act—lawyers, trade associations, jounalists and public interest groups. The report also used data drawn from annual Sunshine reports required of agencies and judicial decisions interpreting the Act.

The 1984 Welborn report found that one of the clearest and most significant results of the Sunshine Act is to diminish the collegial character of the agency decision making process. Agency members were perceived as reluctant to discuss certain important matters given the open meeting requirement. The report found that in some agencies, the pattern of decision making shifted from collegial exchanges to one-on-one encounters, transmissions of views through staff, and notation voting. Additionally, the report found that inhibition of collegial exchanges tends to weaken the role of the collegium vis-a-vis that of the staff and agency chairman. Policy and strategic planning and the provision of meaningful direction to staff, the report found, commonly require speculative exploration of sensitive matters at the early stage if there are to be productive results.

The report plainly stated that these above conclusions were based on perceptions rather than verifiable, objective measures. For example, the report cited the following impressionistic data: In response to questions concerning interaction among agency members before the Sunshine Act: 80% of the respondents serving before and after 1977 indicated important matters were often discussed in formal meetings; 86% said members made up their minds most or some of the time after discussion in meetings. In response to questions concerning the apparent shift from collegial to individualized decision making since Sunshine, 54% of the respondents perceived an increase in notation voting: 83% thought members make up their minds prior to open meetings; 44% saw same the phenomena prior to closed meetings.

The report did not fully address the quality of agency decision making under the Sunshine Act. Professor Welborn correctly

stated that quality is a subjective phenomenon and admitted that the Act's consequences for the substance, character and quality of agency decision is unclear. A substantial number of those surveyed felt that the Act had no impact, or a positive impact, on the quality of decision making.

This was an important point. In 1983, the Adjudications Committee of the Administrative Conference delayed making any Sunshine Act recommendations to the full Administrative Conference, having reached the conclusion that an earlier report prepared by Professor Welborn did not adequately support its recommendations to allow agencies to close meetings dealing with prospective rulemaking, legislative initiatives and budgetary matters. While earlier reports and the final Welborn report showed that Sunshine had some impact on the collegial process, the statistics were conflicting. The final report states that the primary purpose of collegiality is to produce quality decision making, but did not explore the issue in order to compare quality of decision making before and after Sunshine. The reports, in effect, did not support the position that the Act has had an overall negative effect on agency operations.

Finally, the 1984 Welborn report noted the difference between compliance with the letter of the Sunshine Act and with its spirit, or intent, which calls for maximum public access to the decision making processes of government. While agencies are generally in accordance with the letter of the law, Professor Welborn correctly pointed out that certain deficiencies do exist in Sunshine Act implementation. Meetings are often closed on technical legal grounds when there is no substantive reason to do so, at times there is not enough discussion at open meetings to allow the public to understand the proceedings, and some agencies do not provide sufficient background materials and documents underlying agency discussions and decisions.

However, the report found that the degree of agency compliance with the Sunshine Act is high, that implementation of the Act is not especially costly or budensome, and that the Act has had a positive effect on the openness with which agencies conduct business. According to the report, the flow of information to the interested public has increased since Sunshine, as some agencies have even gone beyond what is required by the Act in making information available. The report concluded that more time would be required to determine whether the Sunshine Act strikes an appropriate balance between the public's right to know and the confidentiality of administrative deliberations.

The report made two proposals to the Administrative Conference for improved administration of the Sunshine Act. These proposed recommendations were adopted by the Administrative Conference in June, 1984. The carefully restrained recommendations (1) urged periodic agency review of Sunshine practices and (2) addressed the apparent impact of Sunshine on the collegiality of agency decision making. The latter recommendation stated that under the Government in the Sunshine Act the degree of collegiality in the multimember agencies has diminished. Congress should consider whether the present restrictions on closing agency meetings are advisable, and, if not, how they might best be revised without undercutting the basic principle of the Act.

If a new balance is to be struck between the values of collegiality and openness, the Administrative Conference suggested that agency members be permitted some opportunity to discuss the broad outlines of agency policies and priorities (including enforcement priorities) in closed meetings, when the discussions are preliminary in nature or pertain to matters, such as budget or legislative proposals, which are to be considered in a public forum prior to final action. This last recommendation was certainly less sweeping than the earlier Adjudications Committee recommendation which essentially created a whole new set of exemptions to the Sunshine Act.

Like the proposals set forth in the final 1984 Welborn report, the 1983 Welborn proposals were also offered by the Administrative Conference in the form of proposed recommendations, but not adopted. The 1983 recommendations specifically stated that the Government in the Sunshine Act should be amended to allow agencies to consider in closed meetings subject matter concerning budget formulation and execution, legislative programs and positions, and prospective rulemaking initiatives.

The 1983 recommendations touched off a wave of criticism. As Senator Chiles expressed in a letter to the Administrative Conference:

> I strongly oppose the (Adjudication) Committee's proposed recommendation that the Sunshine exemptions be increased to include budget discussions, legislative programs and positions, and prospective rulemaking initiatives . . . The reasons cited are that agency members fear that they will appear unprepared, be locked into a position early in the deliberative process, or make a statement with unexpected political or market implications. The result, the report concludes, is that the Sunshine Act has had an adverse effect on the collegial process and that the Act should be amended to allow agency members more freedom to discuss some issues behind closed doors.
>
> . . . The reasons given to support increasing the exemptions are the same ones that Congress heard and rejected in 1976. They do not present any new or persuasive evidence that the public would be better off if they were not able to view multi-member agencies at work . . . The argument that meetings regarding budgetary issues and legislative initiatives can be closed without damaging the public's access to information . . . misses the point. The Sunshine Act was enacted to give the public an opportunity to understand the deliberative processes of multi-member agencies . . . There is no substantive reason why the public should be prevented from viewing discussions on how to spend the public money, nor is there any reason why people should not have access to debate on legislative initiatives and prospective rules that will affect their lives and communities. Multi-member agencies serve a public purpose; Congress has decided the public should have an opportunity to understand broad agency policy, not just the details of a specific rule or piece of legislation . . . the suggested reforms represent a significant retreat from the principles embodied in the Act. (Letter of Senator Lawton Chiles to Richard Berg, General Counsel, Administrative Conference of the United States, 10/14/83.)

Other Sunshine proponents echoed this view. Common Cause stated:

> It is precisely because of the long-term consequences of decisions in these three areas of agency activity that public access to the process should not be barred.

As Common Cause pointed out, these areas are of particular importance for public understanding of the development of agency policy. (Comments of Common Cause regarding Proposed Recommendation to Amend the Government in the Sunshine Act Before the Administrative Conference of the United States, 10/24/83.)

Senator Pete Stark commented:

The balance between the public's right to know and the need for frank discussion in agency hearings is a delicate one, but one which should be preserved . . . the proposed amendments to the Sunshine Act are a step in the wrong direction, down a potentially slippery slope to excessive government secrecy. (Letter of Senator Pete Stark to Richard Berg, 10/21/83.)

Michael Pertschuk, Commissioner at the Federal Trade Commission, observed:

. . . the (Welborn) report's proposed remedy seems to go in exactly the wrong direction. It isn't surprising that some agency members are sometimes reluctant to speak strongly or engage speculation at open meetings for fear of displaying bad judgment, uncertainty, or deficiencies in the proposed action. But that doesn't mean that we should therefore close the public out of meetings to spare agency members from those possibilities . . . While I recognize that some agencies may have a particular problem in discussing fundamental policy issues in public, there is no reason to believe that *all* agencies have such problems. (Comments of Michael Pertschuk to the Administrative Conference, 10/24/83.)

B. American Bar Association Recommendations Regarding the Government in the Sunshine Act

In 1985, the American Bar Association (ABA) Administrative Law Section undertook a review of the Government in the Sunshine Act. A special task force appointed for this review determined that the Sunshine Act did not require any basic amendment, revaluation or additional exemptions. During discussions with agency general counsels, however, the task force found that problems with the Act existed, specifically problems regarding the definition of "meeting." In May 1986, the Task Force issued a draft report on its findings, recommending changes regarding the interpretation of the term "meeting" as used in the Sunshine Act.

In February 1987, the ABA House of Delegates approved the Task Force recommendations, called "guidelines," to Federal agencies and courts. The recommendations provided that meetings not "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating agency members to form reasonably firm positions regarding matters pending or likely to arise before the agency" could be closed under the Sunshine Act. According to the recommendations, the definition of "meeting" did not include spontaneous casual discussions among agency members, briefings of agency members by staff or outsiders, general discussions of subjects relevant to agency responsibilities and exploratory discussions which are preliminary in nature. The recommendations further proscribed that appropriate mechanisms, such as monitoring by general counsel, be used to ensure that such discussions exempt from the Sunshine Act do not proceed to the point of becoming "meetings." The recommendations, when first drafted and later approved, were criticized by Senator Lawton Chiles on the grounds that they would send the wrong signal to Federal agencies. In addition, the ABA Section of Individual Rights and Responsibilities voted to oppose the recommendations.

The Administrative Law Section undertook its review of Sunshine in response to three events: the Administrative Conference of the United States' commissioned Welborn Report and following recommendations issued in 1984; the 1984 Supreme Court decision in *Federal Communications Commission* v. *ITT World Communications, Inc.,* 466 U.S. 463 (1984); and the Nuclear Regulatory Com-

mission's revision of the definition of "meeting" in its own Sunshine Act regulations. (The Welborn Report/ACUS recommendations and the NRC are treated separately in this Report.)

This Committee Report does not attempt to debate, in full, the merits of the ABA recommendations. However, this Report does question the ABA having based its recommendations on the two "dark points" of Sunshine history—namely, the Supreme Court's decision in *FCC* v. *ITT* and the NRC's unilateral decision to redefine "meeting" for its own purposes—ignoring the victories of the Act. It is also questionable as to whether, in encouraging agencies to tinker with the definition of "meeting" so as to exclude the public from a potentially large number of meetings, the ABA was acting within the realm of its own appropriate behavior (see Sen. Lawton Chiles letter to Eugene Thomas, President, ABA, February 2, 1987). As the Administrative Law Section reported during the ABA House of Delegates meeting, "We . . . felt that there should be certain guidelines laid down so that federal agencies would know where they could go and where they couldn't go . . ." (See Transcript of ABA House of Delegates meeting, February 16, 1987, p. 16.)

In effect, the Administrative Law Section's guidelines totally circumvented the intention of the Sunshine Act by basically creating a new category of meeting—a "gathering"—excluding from the Act's requirements general and exploratory discussions. Many of the arguments raised by the Administrative Law Section were arguments considered and rejected by Congress during passage of the Act. In making the recommendations, the ABA was essentially stepping into the role of Congress which is responsible for the implementation and oversight of the Sunshine Act.

It is worth noting that the Administrative Law Section did not conduct independent research during its review of the Act. The Section stated in its Report to the ABA House of Delegates, "In pursuing this task we have not engaged in much original research but have relied primarily on the (Welborn) report to the Administrative Conference . . . and the reported cases, particularly *FCC* v. *ITT World Communications.*" (ABA Section of Administrative Law Report to House of Delegates, August 1986, p. 5.) As this committee report has detailed, the Welborn Report commissioned by ACUS characterized its own conclusions and analyses as being based on "impressionistic evidence" and cautioned that the evidence relied upon for the report was based essentially upon perceptions rather than verifiable, objective measures, and recommended additional analysis. The Welborn Report went on to state that the Sunshine Act has been beneficial in that members of Federal agencies are better prepared to address issues particularly in open meetings than they were before the Sunshine Act.

Further, the Welborn Report did not present any clear evidence that the quality of agency decisionmaking has diminished as a result of the Sunshine Act. The Administrative Conference did not call for relaxation of the Sunshine Act's open meeting requirements. Rather, the Conference urged Congress to consider whether the Act's restrictions are advisable.

Given the impressionistic and even inconclusive nature of the Welborn Report, the Administrative Law Section's primary reliance upon it seemed, therefore, questionable.

In *FCC* v. *ITT,* the Supreme Court rendered its first and only decision under the Sunshine Act. In the case, three members of the FCC were involved with their European counterparts in a series of closed meetings on how to improve the regulation of international telecommunications. ITT, concerned about the possible entry of competitors into the international telecommunications market, challenged FCC's closure of the meetings, claiming they were subject to Sunshine Act provisions. Although the FCC members did not make up a quorum of the Commission, they did constitute a quorum of the Commission's Telecommunications Committee. (The Sunshine Act applies to committees as well as full commissions.) The Administrative Law Section of the ABA filed an amicus brief in support of the Government in the case.

The District Court and the Court of Appeals for the District of Columbia agreed that since a quorum of the committee was present, the members were engaged in the kind of meetings covered by Sunshine and ordered the FCC to comply with the Act's provisions.

The Supreme Court reversed, focusing primarily on the definition of "meeting." Although the facts of the case are rather unique, the Court's decision did include broader language concerning the Act. The Court stated that the term "meeting" does not encompass informal background discussions that clarify issues and expose varying views. Instead, the Court defined meetings under the Sunshine Act as discussions that effectively predetermine official agency actions and that are "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." While Sunshine Act proponents took seriously the Supreme Court's decision, proactive implementation would have been perhaps impossible, and certainly likely to lead to an uninformed and uninvolved public.

In its analysis of when a general or explanatory discussion should fall outside the definition of "meeting" the Administrative Law Section's Task Force acknowledged several of the difficulties likely to be encountered. The Task Force resolved the problem by relying on the *ITT* decision, although the decision itself raised several problems: How does one determine at what point in a meeting the discussion will lead to "reasonably firm" positions? Does not, in fact, all information potentially lead to a decision? How will agencies ensure that "gatherings" closed to the public do not become "meetings" the public has a right to attend? How will agencies know whether an issue is "likely to arise" before it is even discussed by members? Finally, if agency members are constantly preoccupied about whether they are forming reasonably firm positions on issues, doesn't that defeat the purpose of holding informal gatherings in the first place? (See "Open Meetings Act: High Court Decision Muddles the Issues," Eric Glitzenstein and Patti Golman, *Legal Times,* September 28, 1986.)

The recommendation was, the Administrative Law Section held, merely a "statement" of what the Supreme Court held in *FCC* v.

ITT, or an attempt to codify the decision. However, the Administrative Law Section stated in its report to the House of Delegates that the *ITT* decision did not have broad implications for all agencies administering the Sunshine Act. If, in fact, the Supreme Court decision had limited implications for agencies covered by the Act, it seems questionable as to whether the ABA should have so entirely embraced the decision in the form of formal ABA recommendations or guidelines. Interestingly, during the Feb. 16, 1987 meeting of the ABA House of Delegates when the Administrastive Law Section recommendations were adopted, one delegate stated, "Out of the goodness of their heart and understanding . . . the Administrative Law Section saw what was happening . . . and set these guidlelines so that the agencies could understand and follow." (See Transcript of ABA House of Delegates meeting, February 16, 1987.

Finally, the Administrative Law Section itself acknowledged that there are major obstacles to translating the opinion into guidelines for determining when a gathering is a meeting. (See Report to House of Delegates, April 25, 1986.)

The third event upon which the ABA based its recommendations was the Nuclear Regulatory Commission's decision to alter its definition of meeting in keeping with the Supreme Court's rhetoric in the ITT case: meetings not focused on discrete proposals or issues as to cause commissioners to form reasonably firm positions regarding matters pending or likely to arise before the agency could be closed to the public. The NRC issued its new regulations on an interim basis, effective immediately, without providing the public advanced notice or opportunity to comment. While it could be argued that some minor changes in Commission procedures were necessary to increase the agency's effectiveness, the NRC rule change clearly compromised the intent of the Sunshine Act; the changes were neither minimal nor within the terms of the Act. (See statement of Senator Lawton Chiles submitted for the record, hearing before the House Subcommittee on Energy Conservation and Power May 21, 1985). The NRC already had made attempts to keep such matters as budget decisions from Sunshine Act requirements. (See *Common Cause* v. *NRC.)*

The NRC proposal touched off a storm of criticism, and the Commission temporarily tabled implementation. As critics pointed out, the proposed rules sent the wrong signal about the Commission's intent, showing insensitivity to the public's (and Congress') need to know about nuclear policy issues, although Chairman William Murane of the Administrative Law Section of the ABA stated that the NRC had "a point." ("Chairman's Message," Administrative Law Review, Fall 1985.) The new regulations were never formally adopted by the NRC.

Again, the ABA's reliance upon the NRC rule change, like the *ITT* decision, as a basis for its recommendations, is questionable. It was clear the NRC embraced the Supreme Court's opinion in order to avoid certain procedural requirements of the Sunshine Act and futher cloak commission proceedings. Although he was the only NRC Commissioner to dissent from the proposed rule change, James Asselstine commented that the "nonmeetings" covered by the new rules were unnecessary, and that the other Commissioners were simply afraid to talk about important issues before the public.

The commissioners had, he said, lost sight of the fact that it is the public's business they handle. While William Murane attributed the public criticism aimed at the NRC to simply the "heavy-handed" way in which the proposed rule change was announced and implemented (Administrative Law Review, Fall 1985), it seems the more important point is that of Commissioner Asselstine.

The important issue arising in connection with the ABA recommendations is collegiality. The Administrative Law Section's Report to the ABA House of Delegates accepted the conclusion of the Welborn report that the collegial character of agency decision-making had diminished as a result of the Sunshine Act. As the Administrative Law Section Report stated, the Act has had "an inhibiting effect on initiation of discussions among agency members. This is the conclusion of the Welborn report and was confirmed by our meeting with agency general counsels." The Administrative Law Section Report also stated that the "sheer logistical difficulties in invoking the machinery of the Act has made difficult if not impossible the maintenance of close day-to-day working relationships" in those agencies. (Report to House of Delegates summary at 11.)

While the Welborn report and the Administrative Law Section assert that the Sunshine Act has interfered with collegiality among agency members, this notion has never been conclusively proved. The Administrative Conference of the United States, as this committee report has indicated, never called for loosening of the Sunshine Act's open meeting requirements after the Welborn report was issued. The Administrative Law Section, on the other hand, recommended that the principles announced in the *ITT* decision be applied to ease relationships within agencies, provided certain procedures are followed to prevent abuse. Nevertheless, the Administrative Law Section did state that the impact of the ITT case on collegiality was likely to be slight (summary at 12). Critics and proponents of the Sunshine Act shared this latter view.

It is clear agencies require some flexibility and informality if they are to conduct business effectively and efficiently. Inherent tension exists between the goal of the Sunshine Act—greater public access to the government's decision-making process—and uninhibited discussions among agency decisionmakers. (Glitzenstein & Goldman) During debate prior to passage of the Sunshine Act, considerable attention was given to the concern for collegiality in agency decision-making. (The Welborn Report incorrectly states that little if any attention was given to collegiality.) However, Congress determined—by unanimous passage of the Act—that openness overrode whatever detriment there might be to the collegial process.

The requirements or "sheer logistical difficulties" of the Sunshine Act have been a bone of contention with some regulatory agency members. Congress sought through lengthy hearings and negotiations to ensure that agency functioning would not be impaired. While complaints have and most likely will continue to arise, there is no real evidence that the law interferes with the normal operations of any agency. The Federal Reserve Board, for example, had great reservations about the Sunshine Act when it was first introduced. The Chairman under President Nixon, Arthur Burns, said that the government would "collapse" if the Sunshine Act became law. The Board has since grown used to it. In a 1985

letter to Senator Durenberger the Board's general counsel stated, "Our experience has been that the open meeting requirements of the Sunshine Act are workable and that the burden of compliance does not impair the board's essential operations."

The difficulties raised as a basis for criticizing the Act, the lack of spontaneity, restraint of frank conversation and general decline of collegiality, essentially miss the mark. As Senator Chiles has pointed out, Congress, in enacting legislation such as the Freedom of Information Act and Government in the Sunshine Act, was not acting to serve the interests of Federal agencies but rather the interest of the public. While the Sunshine Act proves inconvenient for some agencies, that is, according to Senator Chiles, a small price to pay when weighed against the public's right to know. ("The Sunshine Act Does Too Work," Lawton Chiles op ed, The Washington Post, August 4, 1984.)

The Sunshine Act may not be responsible for the decline in collegiality in Federal agencies, a point many critics dispute. Former Chairman of the Federal Trade Commission Michael Pertschuk has maintained that problems with collegiality are inherent in multi-member commissions comprised of members with sharply different views. Describing the FTC's experience under the Act, Pertschuk asserted that openness in government produces better policymaking and more effective accountability, adding that the costs imposed by the Act are undoubtedly justified by the public benefits they produce. (Pertschuk meeting with ABA Task Force, March 11, 1986, and statement to the Subcommittee on Federal Spending Practices and Open Government, August 4, 1978.)

That the Sunshine Act has actually improved the quality of agency decisionmaking, despite the inconvenient "machinery" of the Act is well-founded. Multi-headed agencies operate on the principle of give-and-take discussion between members. By opening up the deliberative process to public scrutiny, the Act forces agency members to express their own views and at the same time respond to differing points of view. Opening up the process also results in commissioners being better prepared for meetings. The concern about collegiality may serve as an excuse for agency members who wish to avoid public debate on issues that are of concern to the public. In fact, the case for the decline in collegiality described in the Welborn report is drawn entirely from input by agency personnel—respondents whose "basic value orientations" would naturally favor further secrecy.

Citizens cannot hold government officials accountable if they do not know what those officials are doing. As one observer pointed out during the ABA House of Delegates debate over the Sunshine Act recommendations, "Collegiality is important . . . But it is not something that should be done at the expense of the public's right to access to the decision-making process by administrative agencies . . . This resolution sends the wrong message to Federal agencies. It is the wrong message for the American Bar Association to be sending. . . ." (Comments of Martha Barnett at ABA House of Delegates meeting, February 16, 1987.)

C. Interstate Commerce Commission

The success of the Sunshine Act has been due, in large part, to attitudes of agencies covered by the law. Some agencies have favored the "presumption of openness," as Senator Chiles described it, contained in the Act. Others have not.

Between October 1982 and May 1984 the Interstate Commerce Commission (ICC) did not hold one public meeting, conducting all of its business with procedures designed to avoid public discussion. Rather than comply with or attempt to comply with Sunshine Act requirements, the Commission simply stopped meeting. The commissioners did their work by telephone, having adopted a system of notation voting to consider issues. The Commission, in fact, had not held regularly scheduled meetings since the late 1970's.

The ICC is a major Federal agency, regulating the trucking and rail industries and interstate bus service. During the 18 months in which the commissioners did not meet, important decisions were made on shipping rates, rail and truck deregulation.

Among those members of the Adjudications Committee of the Administrative Conference of the United States pushing for revision of the Sunshine Act, Chairman Reese Taylor of the ICC was, not surprisingly, the most vocal. During meetings of the Adjudications Committee, he expressed his support for whatever legislative proposals were necessary to give agencies more discretion to hold private meetings. Claiming the Sunshine Act impairs the collegial process, Chairman Taylor thought it impossible for agency members to speak frankly in public and found transcripts of closed meetings equally inhibiting. He felt agency members should be allowed to meet in private as often as necessary to discuss any matters, including agency budgets.

The ICC's "phone polling" was uncovered at a Senate hearing dealing with the Commission's budget. (See Department of Transportation and Related Agencies Appropriations for fiscal year 1985, Senate Transportation Subcommittee, Hearing No. 98-1034, Part 2, pp 429-629, April 4, 1984.) According to Chairman Taylor, the ICC was not violating the Sunshine law since the votes were taken by telephone were recorded and available for public inspection.

At a minimum, however, the practice was a violation of the spirit—if not the letter—of the Sunshine law. As Senator Chiles commented at the Senate hearing, the ICC's failure to hold open meetings directly contravened the Sunshine Act. The ICC, Senator Chiles said, had institutionalized the breach of sunshine, demonstrating a mentality that "this belongs to us and we're not going to be inconvenienced." At the hearing, Chairman Taylor could not recall when the Commission last met, and could not comment on whether the public ever got an opportunity to observe or participate in Commission discussions. When asked whether notation voting afforded the ICC any opportunity to have a collegiate discussion, Taylor said the Commission really did not have a collegiate process. In fact, when Taylor commented there would be a change in Commission practices, notably open meetings, he was not certain whether other commissioners would come. As he put it, "We haven't had that many chances to find out if they'll turn us down or not."

The situation at the ICC brought up several points related to success (or lack thereof) of the Sunshine Act. First, leadership and an attitude of openness on the part of an agency Chairman are absolutely essential, and neither existed in this case. Second, for the public to benefit from Sunshine Act requirements, agencies must focus on the public's right to observe its government at work, rather than perceive the public as a watchdog Congress has put in place to protect against agency abuse. Third, collegiality is doubtless important, but it need not nor should not exist at the expense of the public interest. Protection of the collegial process was no excuse for the ICC's 18-month secrecy period. Chairman Taylor's criticism of Sunshine in the name of collegiality was a disservice to the public, especially since he did not even attempt to see that openness can work.

One month after the Senate hearing discussed above, the ICC held its first open meeting in over a year and a half. At the meeting, the ICC adopted Chairman Taylor's proposal requiring the Commission to consider all major transportation issues within formal meetings. The proposal also gave each member the authority to call a meeting of the full Commission.

D. Nuclear Regulatory Commission

The Nuclear Regulatory Commission is one agency which has had, basically, complete disregard for the Sunshine Act. Many who have followed its proceedings over the past several years claim that the NRC has become "expert" in exploiting available mechanisms to avoid public discussion or divulgence of issues.[1] According to a study completed by the Congressional Research Service included in this report, the NRC places no restrictions on the type of issues resolved behind closed doors and uses notation voting procedures for matters that by law require formal vote in open meetings. As the Federal agency responsible for protecting the public from the risks of nuclear energy, the NRC has a serious responsibility to conduct the public's business in an open and deliberate manner. This is a responsibility the Commission has, for the most part, ignored.

Common Cause v. *NRC,* 674 F.2d 921 (D.C. Cir. 1982) was considered a leading case in which an agency's interpretation of a Sunshine Act exemption was challenged. The issue was whether budget meetings can be closed under the Act.

In July 1981, the U.S. District Court for the District of Columbia held that the NRC acted contrary to the requirements of the Act when it closed its budget deliberations under exemption 9(b). The exemption allows agencies to close meetings if open deliberations would be "likely to significantly frustrate implementation of a proposed agency action." The Court ordered release of the transcript of the closed meeting and enjoined the NRC from closing its budget deliberations.

Shortly after the district court ruling, the NRC scheduled a series of meetings to discuss budget requests for fiscal 1983. The Commission divided the meetings into two categories, preliminary

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[1] See, for example, statements of Ellyn Weiss, General Counsel, Union of Concerned Scientists, before the House Subcommittee on Energy Conservation and Power, May 21, 1985, and before the Senate Subcommittee on Federal Spending, Budget and Accounting, April 19, 1988.

staff briefings and markup/reclaim sessions, with the former open and the latter closed to the public under exemptions 2, 6, and 9(b). Common Cause filed suit, asking the district court to enforce its injunction requiring the NRC to open its budget meetings to the public. The court did not immediately act upon Common Cause's motion, and the NRC went ahead and held a closed markup meeting. The district court ordered the NRC to release a transcript of the meeting to the public and two weeks later, issued an order holding the NRC in contempt of court for closing the meeting.

A stay was issued by the Court of Appeals for the District of Columbia. On appeal, the D.C. Circuit struck down the district court's injunction which permanently enjoined the NRC from conducting "future meetings of a similar nature" in closed session on the grounds that it violated the Federal Rules of Civil Procedure. However, the court concluded that no blanket exemptions existed for budget deliberations in the Sunshine Act and that the exemptions used by the NRC to close its meetings could not be interpreted so broadly. The court specifically refused to apply exemptions 9(b), 2 and 6, and stated that if Congress had wished to exempt budget deliberations from the Sunshine Act, it would have expressly so indicated.[2]

The NRC's closed-door decision making drew additional attention in the case of *Philadelphia Newspapers* v. *NRC,* 727 F.2d 1195, (D.C. Cir. 1984). In the case, the NRC was ordered to release transcripts of secret meetings concerning the restart of Three Mile Island Unit 1. The court held that the meetings had been illegally closed, and commented that nowhere was the need for accountability more acute than in the NRC's handling of the Three Mile Island case. Without a doubt, the decision stated, Congress intended that the Sunshine Act would guarantee public accountability of what is one of the most sensitive and difficult issues of our time—the safety of nuclear power.

The Three Mile Island transcripts showed just to what extent the NRC, and particularly its Chairman, disregarded the public. At a closed-door meeting in December 1981, the commission considered holding a public meeting in Harrisburg, Pennsylvania to discuss the Three Mile Island restart. The Chairman commented that it might not be a good idea, adding "My frank opinion and deep seated feeling is I would not want to have a meeting where you have a lot of people from the public just get up and rant and rave." (See "TMI Transcripts Show Disdain for Public's Views," *The Philadelphia Inquirer,* June 10, 1984.)

As the court seemed to imply, no case illustrated the need for open government as well as the *Philadelphia Newspapers* case. Senator chiles remarked that few agency decisions were of greater interest to the public than the fate of the Three Mile Island facility. The people of the area understandibly had strong views on the issue, so when the NRC finally reached a decision on the plant, it was important they be convinced the decision was made in a re-

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[2] Many agencies have held (and continue to hold) their budget deliberations in open session. Congress, in enacting the Sunshine law, deliberately and clearly rejected the pleas of other agencies to provide a blanket exemption for budget discussions.

sponsible manner. Confidence in an agency's decision is impossible if it is deliberately made behind closed doors.

In May 1985, the NRC issued a new regulation designed to "modestly restrict" the definition of meeting for Sunshine Act purposes in language taken directly from the Supreme Court's *FCC* v. *ITT* decision. In a May 21 Federal Register notice, the NRC explained in general terms the type of deliberations, or "gatherings," it would not consider to constitute meetings. As the NRC commented:

> The ability to hold informal preliminary briefings can help assure that commissioners are well informed about subject areas well before any particularized proposal reaches them for consideration. The ability to hold free-flowing discussions of a variety of problems likely to face the agency, or get together for "brainstorming sessions," can foster both collegiality and sound management. It is through such generalized background discussions that commissioners can decide what topics should become the subject of more particularized proposals, discussions of which would fall within the Act's definition of "meeting." (50 Fed. Reg. 20889.)

Those meetings not focused on discrete proposals or issues as to cause commissioners to form reasonably firm positions regarding matters pending or likely to arise before the agency could be closed to the public. Under the change, meetings could be closed with no notice and no explanation to the public. The NRC issued the rule on an interim basis, effective immediately, without providing the public advanced notice.

(In a hearing before the House Energy and Commerce Subcommittee on Energy Conservation and Power, NRC Chairman Nunzio Palladino said the agency's ability to discuss complex issue informally would contribute to the "effective conduct" of agency business. Commissioner James Asselstine was the only commissioner to object, and said the change carried a "serious potential for abuse" with no remedy possible. (May 21, 1985.)

Senator Chiles and Common Cause issued a joint statement urging the commission to retract the regulation. The statement argued that the regulation (1) was fundamentally subversive of the Sunshine Act since it eliminated from the Act coverage of meetings Congress clearly intended to be covered (2) constituted a vague, impractical and non-operational definition of meeting and (3) should have been published as a proposed rule in accordance with the Administrative Procedures Act.

The joint statement stressed that the definition of meeting in the Sunshine statute was not limited to "focused" discussions on "discrete" proposals or issues where members form "firm" positions. The statutory term "meeting" encompassed "deliberations [that] determine or result in the . . . disposition of official agency business" as well as the "joint conduct" of agency business. The NRC's new definition completely read out of the statute meetings that, though not precisely focused, clearly constituted the conduct of agency work.[3]

Furthermore, the NRC's reliance (like that of the ABA) on the *FCC* v. *ITT* decision was misplaced. Senator Chiles and Common Cause pointed out that under the quite peculiary facts of the case,

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[3] Legislation (H.R. 2743) was introduced in June 1985 to require the NRC to adhere to certain principles in the conduct of its meetings, including maintenance of complete transcipts of certain closed meetings. The legislation also redefined meetings to include preliminary discussions and staff briefings.

the Supreme Court held that a quorum of an agency subcommittee was not a meeting under the Sunshine Act because it was not acting under formally delegated authority. The NRC should not have wrenched that holding out of context in order to establish a more limited definition of meeting.[4]

While the Commission explained its rule change as furthering its "ability to hold free-flowing discussions of a variety of problems likely to face the agency . . .", these were precisely the kind of discussions Congress intended to open to public view. The whole decision making process, not merely its results, must be exposed to public scrutiny.

The NRC never formally adopted the new rules.

Not surprisingly, the NRC embraced the Administrative Conference's conclusion that the Sunshine Act has diminished the colegiality of multi-member agencies, and agreed that Congress should consider revising the Act. Commissioner Asselstine commented, "Although I agree that there has been a decline in the collegiality in the Commission in recent years, that is the fault of the Commission, not the fault of the Sunshine Act." (Chairman Nunzio Palladino's letter to the Senate Subcommittee on Intergovernmental Relations, December 13, 1985.)

E. Legal Services Corporation

The Legal Services Corporation is another agency which has been unwilling to fully comply with the letter and spirit of the Sunshine Act. The Corporation was established by the Legal Services Act as a private, nonmembership, nonprofit corporation for the purpose of providing financial support for legal assistance to low income individuals. The Corporation is covered by all requirements of the Sunshine Act.

In September, 1983, the Legal Services Corporation placed notice in the Federal Register that a meeting of the Corporation's Board was to be held on October 4, 1983, in Washington, DC. At the meeting, the Board was to discuss several proposed regulations which would substantially change the nature of legal services. The items set for discussion included eligibility requirements, private bar involvement and policies regarding legal services program fund balances, and instructions regarding how local programs would set

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[4] See also Public Citizen Press Release/Letter to NRC, January 16, 1986. ". . . members of the Commission have yet to offer any compelling legal explanation or statement of need for changing its previous policy of open meetings. . . The Commission's only justificaiton to date for the change is that it will enhance the "collegiality" of decision making—that is, the ability of Commission's members to talk among themselves without being held accountable to the public."

Also, floor statement of Senator Gary Hart, May 13, 1985, ". . . The NRC has apparently found the confines of the Sunshine Act too restrictive for comfort. After chafing under the congressionally mandated requirements that meetings be conducted in the open, the NRC not only decided to soothe itself by changing the definition of what constitutes a meeting, but also decided to put that decision in place immediately.

It astounds me that the NRC fails to understand the importance of conducting its meetings and making its decisions in an open, deliberate, and well-considered fashion. Apparently, the arrows pointed at the NRC following the accident at [Three Mile Island] TMI have done little to convince them that nuclear energy is different from other industries. Fear and apprehension about nuclear power remains as pervasive as ever. The only reasonable response to this is to make our processes more open than ever. Now the agency wants to return to the back room, to conduct shell games with the public.

This is unacceptable and I hope further prodding from Congress will not be necessary before the Commission reconsiders this regressive, unnecessary, and counterproductive decision."

priorities in the types of cases handled. Given the significance of the issues to be considered, beneficiaries of the legal services program, legal services advocates, members of the media and other interested parties planned to attend the meeting to voice their opinions and concerns.

On October 3, the Corporation indefinitely postponed the October 4 meeting, with a notice to that effect placed in the Federal Register on October 5. A few days later, the Corporation rescheduled the October 3 meeting for October 13, to be held in Salt Lake City, Utah, providing no notice to the interested public. As of October 12, the Corporation had not published notice in the Federal Register. It was fairly clear that the Corporation changed the date and site of the meeting to avoid public opposition to the proposed regulations.

The Sunshine Act requires that covered agencies give adequate public notice, at least one week in advance, of any meeting to be held either open or closed to the public. When a meeting is legitimately rescheduled, the Act requires such change be announced at the earliest practicable time. If a meeting is held in a location many miles from where meetings are ordinarily held, agencies should, ideally, demonstrate good faith by giving the public at least the 7-day notice required by the Act. The Legal Services Corporation's notice did not comply with these Sunshine Act requirements.

The Coalition for Legal Services and the National Council of Senior Citizens requested that the Corporation either postpone the Salt Lake City meeting until reasonable advanced notice was provided or hold the meeting in Washington, DC. The Corporation did neither, and the two groups sought a temporary restraining order to prevent the October 13 meeting from proceeding.

On October 12, the United States District Court for the District of Columbia granted the restraining order, blocking the October 13 meeting. As District Court Judge Barrington Parker stated, "Congress' intent in enacting the Sunshine Act was to afford persons who are interested in and affected by an agency's work an opportunity to attend the agency's meetings. In this case, the fact that a Federal Register notice regarding the Salt Lake City meeting will not be circulated until . . . October 12, at the earliest, one day before the scheduled meeting, supports the conclusion that the public will not receive adequate notice of the meeting in violation of the letter and spirit of the Sunshine Act." (Temporary Restraining Order issued by U.S. District Judge Barrington Parker, October 12, 1983.)

On October 13, the United States Court of Appeals upheld the lower court's decision.

The important point in this case was not simply that the Legal Services Corporation failed to give adequate public notice. The point, as the Coalition for Legal Services Executive Director stated, was that the Corporation abruptly (and perhaps deliberately) cancelled a highly publicized and controversial meeting which had been scheduled for weeks and then tried to hold it unannounced, over a thousand miles from the clients and organizations planning to attend. (Coalition for Legal Services press release, Bob Rhudy, Executive Director, October 12, 1983. A number of major policy changes were to be discussed at the meeting. The Corporation de-

liberately attempted to discourage public access and inhibit public attendance of its meeting. This tactic was a blatant contravention of the Sunshine Act, as the court ruled.

On Saturday, April 28, 1984, the Legal Services Corporation Board held a meeting in Window Rock, Arizona, again demonstrating its disregard for Sunshine Act intent. The Corporation gave the minimum legally permissible notice for the April 24 meeting, sending the notice on Holy Thursday, knowing that most people would be unavailable for meetings through Holy Week. Window Rock is located an hour and a half drive from the nearest airport. At the meeting, the Board discussed adoption of controversial regulations concerning administrative advocacy, allocations for private attorney involvement, and other issues.

As one interested attorney pointed out in a letter to Congressman Jim Moody, it was hard to imagine a time, place and a method of notice which could be "more arrogantly designed" to prevent the interested public, particularly those representing the poverty community, from attending the meeting. It was little surprise that the new regulations adopted at the meeting received virtually no national or local press coverage. (Letter of Richard Perry of Perry, First, Reiher, Lerner & Quindel, S.C., to Congressman James Moody, May 2, 1984.) Some 275 individuals and organizations had filed comments in opposition to the proposed regulations, including 51 members of Congress.

In May, 1984, the Legal Services Corporation adopted regulations which further frustrated public accessibility to Board meetings. First, they provided that "special meetings" of the Board could be conducted over the telephone. As Senator Chiles pointed out, it was unclear how the public would be able to attend a conference call meeting of the Board, or how a transcript of such a meeting could be made in the event it were properly closed under Sunshine Act exemptions.

Second, the regulations stated any decision that could be made in a meeting also could be made without a meeting if all directors agreed to the procedure. While simple, routine matters can be handled efficiently by notation voting without violating Sunshine Act intent, it is inappropriate for substantive decisions to be made entirely outside the meeting structure, as was the case at the Interstate Commerce Commission. To the extent that members of Federal agencies determine agency policy without meeting, they are not properly doing their job.

Third, the regulations created certain "emergency proceedings" under which the Board could adjourn a meeting if it finds the conduct of a public audience disruptive, reschedule the meeting at a different location, then limit the public presence to those invited to attend. The very inclusion of this provision demonstrated an unfortunate hostility between the Board and the interested public which was clearly antithetical to the principles of open government. With the Window Rock meeting as an apparent example, the so-called "emergency proceeding" violated the spirit of the Sunshine Act. Again, Senator Chiles, in a Congressional Record statement, reminded the Legal Services Corporation that open meetings are not invitation only affairs. (See statement of Senator Chiles, Congressional Record, June 28, 1984.)

In 1985, the Legal Services Corporation amended its previous regulations, notably the provisions regarding "emergency proceedings." The new regulations provided that the Board, by a recorded vote, could authorize the Chairman to simply remove disruptive members of the public from a meeting, rather than reschedule the meeting and invite selected members of the public to attend. As the Corporation stated in its Federal Register notice, the regulations were revised in response to comments received expressing the opinion that the earlier regulations violated the Government in the Sunshine Act.

F. CLARK-COWLITZ JOINT OPERATING COMMITTEE V. FEDERAL ENERGY REGULATORY COMMISSION 798 F. 2d 499 (DC Cir. 1986)

This case contained an important issue under the Government in the Sunshine Act concerning the release of transcripts of closed meetings when an exemption ceases to apply.

In 1980, the Federal Energy Regulatory Commission (FERC) issued a decision on a matter arising under the Federal Power Act. The issue was whether the preference accorded to municipalities in hydroelectric licensing proceedings applies in reliscensing proceedings, as well. In *City of Bountiful, Utah et al.,* (11 FERC (CCH) paragraph 61,337 (1980)) the Commission decided that it did. The decision was challenged by private utilities but affirmed by the Eleventh Circuit Court in *Alabama Power Co.* v. *FERC,* 685 F.2d 1311 (11th Cir. 1982). The private utilities sought review in the Supreme Court by petitions for writ of certiorari, urging the Court to reverse the *Bountiful*'s holding that municipal preference applied in all competitive hydroelectric reliscensing.

On April 25, 1983, FERC held a closed meeting to discuss possible responses to the petitions for certiorari. The meeting was closed to the public. A week earlier, believing the topics to be discussed might involve the agency's "participation in civil action," the Commission voted to close the meeting under exemption ten of the Sunshine Act, which permits an agency to limit disclosure of information concerning an agency's participation in civil action.

The Clark-Cowlitz Joint Operating Committee (CCJOA), a municipal corporation in Washington state, requested a copy of the transcript, which was denied by the Commission, relying on exemption ten. CCJOA made two arguments for release of the transcript of the closed meeting. First, the matters discussed concerned legal points and general policy of broad applicaiblity to other proceedings pending before the agency, rather than facts specific to the civil action in question, as exemption ten envisions. Second, whatever basis for withholding the transcript had terminated along with termination of the underlying civil action, *City of Bountiful, Utah* which served as FERC's basis for closing its deliberations.[1]

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[1] CCJOA had applied for a license to take over operation of the Merwin Hydroelectric Project between Clark and Cowlitz counties in Washington. CCJOA's chief competitor was an investor-owned utility then operating the project. As a result of the *Bountiful* decision, an Administrative Law Judge awarded the Merwin license to CCJOA. Pacific Power & Light Co. and Clark-Cowlitz Joint Operating Agency, 23 FERC (CCH) paragraph 63,037 (1983)

Shortly thereafter, there were reports that FERC was rethinking its *Bountiful* decision and might not affirm the Merwin decision by the ALJ. CCJOA felt the new views of the Commission,

Continued

Despite termination of the civil action, FERC continued to deny CCJOA requests for release of the April 25 transcript. CCJOA brought suit. The U.S. District Court for the District of Columbia affirmed that refusal on the ground that release would have a "chilling effect" on future strategy sessions. The District Court held that even though the underlying litigation had terminated, the Commission's discussions regarding that litigation remain exempt from the Sunshine Act's broad disclosure requirements. The Court went on to state:

> Open and frank discussion concerning litigation strategy would be chilled if it were possible that these discussions would later be made public . . . In order to make exemption ten viable, the discussions that are protected under this exemption must survive long after the litigation has ended.

In October, 1985, a panel of the United States Court of Appeals for the District of Columbia Circuit reversed that decision, ruling that FERC must release the April 25 transcript. The Circuit Court rejected the lower court's argument, finding that, "when the reason for the exemption expires, continued reliance on that exemption to deny disclosure contravenes the Sunshine Act's mandate that agencies 'must conduct their deliberations in public to the greatest extent possible' (Senate Report at 11)." Senator Chiles was on the brief as amicus curiae.

At issue in this case was the central principle of the Sunshine Act.—That the government should conduct the public's business in public. The District Court decision effectively cut the heart out of Sunshine, for agencies could assert in virtually all cases that the opening of discussions or release of transcripts to public view could have a chilling effect on future agency discussions. (If read broadly, the decision could mean that any discussion which arises in the context of litigation strategy is exempt from disclosure.) Thus, under the District Court's reasoning, exemptions from disclosure could become the rule rather than the exception, which clearly was not the intent of the Sunshine Act. As Senator Chiles pointed out in his amicus brief, the same "chilling" argument was made by opponents of Sunshine when it was being considered by Congress. This argument was rejected by Congress unanimously.

Further, in keeping with the Act's presumption favoring openness, transcripts of closed meetings should be released to the public unless the agency can show a continuing need for exemption. According to the Senate report (at 32):

> (a) Meeting will be closed because it involves matters sensitive at the time, such as regulation of financial institutions . . . Later, however, the discussion's sensitive nature may disappear. An agency must then publically release the record of its meeting at a later date when (the exemption) no longer applies.

Thus, if the reason for the exemption expires, so too does the basis for withholding the transcript. The purpose of exemption ten

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which had all new members with the exception of one who had participated in *Bountiful*, would lessen the prospects of winning the Merwin license. As it turned out, in a brief filed in support of the private utilities' petitions for a writ of certiorari, the Solicitor General revealed that at the closed April 25 meeting a majority of the Commissoiners expressed their disagreement with *Bountiful* and voted to request that the Solicitor General to recommend that the Court grant the petitions for certiorari, vacate the judgement of the Eleventh Circuit Court, and remand the case to the court with instructions to remand to FERC for further consideration. On July 6, 1983, the Supreme Court denied the petition for a writ of certiorari, terminating the *Bountiful* litigation. *Utah Power & Light Co.* v. *FERC*, 463 U.S. 1230 (1983)

is to ensure that an agency's prosecution of litigation is not frustrated (or made "impossible to litigate"). In the *Clark-Cowlitz* case, when the Supreme Court declined to grant certiorari in *Bountiful*, the litigation terminated. Release of the transcript could not, then, have made *Bountiful* impossible to litigate. However, the District Court's holding—that the exemption must survive long after the litigation has ended—is open-ended. It virtually assures that anything an agency declares to be secret under exemption ten will automatically remain so in perpetuity.[2]

The Sunshine Act embodies the Congressional view that the public's right to know overrides any chilling of agency expression.—The (supposed) "chilling effect" analysis adopted by the District Court, obviously, runs counter to this view. As Senator Lowell Weicker explained during floor debates:

> We have heard all the arguments against the bill from the commissions and agencies whose operations this bill would bring to light. The points they raise run the gamut from: the bill would unnecessarily inhibit the efficient conduct of an agency business to beliefs that this bill would not allow a free and open exchange of ideas and candid opinions. What they seem to forget is the overriding responsibility to allow the public, in order for them to participate in the decision-making process, to have an unfettered access to information on how their government operates.

Similarly, the Circuit Court stated in its opinion:

> The legislative history of the Sunshine Act makes clear . . . that focusing on the potentially chilling effects of disclosure to define the temporal reach of exemption ten is at odds with the purposes of both that exemption and the Act as a whole. Throughout the course of congressional deliberations various agencies, including FERC's predecessor, the Federal Power Commission, presented apocalyptic visions of the deleterious effect open government would have on the free exchange of ideas within an agency. The congressional response was twofold. First, focusing on the experience in the 49 states that had already adopted open meeting laws, Congress concluded that for the most part the fears advanced by the agencies were unfounded . . . Second, Congress determined that the values inherent in open government vastly outweighed any concerns, whatever their validity, about "chilling" agency deliberations.

FERC petitioned the (US Court of Appeals for the District of Columbia) Circuit Court for a rehearing *en banc*, which was granted. The full court voted to rehear the case and subsequently vacated the panel decision, concluding that exemption ten of Sunshine is not extinguished at the conclusion of the litigation for which it is invoked. 798 F.2d 499 (D.C. Cir. 1986). According to its opinion, the court "did not believe Congress would have written an express temporal limitation into Exemption 9 and yet have intended a similar (unwritten) limitation to apply to Exemption 10." (A passage in the Senate Report explains that for exemption nine, a meeting will be closed because it involves matters which are sensitive at the time, such as the regulation of financial institutions, that would cause financial speculation if disclosed prematurely. Later however, the discussion's sensitive nature may disappear.) The court also found that:

> For purposes of Exemption 10 . . . there could be no hard-and-fast distinction between litigation strategy and policy questions; what matters is simply that the

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[2] The District Court decision also disregards provisions of the Sunshine Act that allow agencies to keep minutes, rather than a verbatim transcript of meetings closed under exemption ten. The alternative method ensures that the sensitive matters of concern to the District Court can remain confidential, allowing the public access to the substantive issues discussed in preparation for the litigation once the case was resolved.

agency deliberations in question deal with "the agency's participation in a civil action."

While the majority opinion found that the sufficient basis for involving Exemption ten is "simply" that the deliberations in question deal with an agency's participation in civil action, the intent of the Sunshine Act is clearly more specific.—As J. Skelly Wright, Senior Circuit Judge wrote for the dissenting opinion:

. . . the majority's broad construction of the litigation exemption to the Sunshine Act is inconsistent with the spirit of the Act . . . To ensure that agencies "conduct their deliberations in the public to the greatest extent possible," (Senate Report at 11) as Congress intended, we must carefully limit the scope of Exemption ten to its underlying purpose—protection of the government's ability to conduct ongoing litigation. Once litigation has ended, agencies must release the transcripts of any prior meetings closed on account of that litigation.

Although the majority maintained that the legislative history of the Act refers to time limits only for Exemption nine, the dissent found that the Senate Report language (see above—"such as regulation of financial institutions") is "clearly exemplary, rather than exhaustive."

As to the "chilling effect" argument, the dissenting opinion held that the majority "offers no evidence . . . that concern over possible 'chilling effects' on agency discussion played any part in the congressional adoption of this exemption. In fact, the legislative history is to the contrary." The opinion went on to state:

Leaving aside any hypothetical chilling effects, once the "particular case" under a discussion in a closed meeting has been resolved, the agency no longer has any information to protect other than its discussion of "adjudication policies in general." This is the sort of discussion that Congress explicitly refused to allow agencies to carry on in secret.

Responding to the majority's extension of exemption ten to cover policy deliberations conducted in conjunction with litigation strategy (absent any "hard-and-fast distinctions between litigation strategy and policy questions," according to the majority), Judge Wright wrote:

Unquestionably, as the majority observes, it is not "unusual for a discussion focused on litigation tactics to lead a party to modify its substantive position." (Maj. op. at 502) But that is not an argument for keeping the discussions secret beyond the time necessary . . . On the contrary, given the Sunshine Act's unequivocal congressional command for openness in government, the inevitable entanglement of general policy discussion argues in favor of a time limit on Exemption 10. Although the Sunshine Act would not demand immediate disclosure of a substantive change in policy if that disclosure would damage the agency's litigation position, the public retains a powerful interest in ultimately knowing how and why that substantive policy change came about.

G. National Economic Commission

Congress created the National Economic Commission (NEC) in late 1987 to explore ways to reduce the nation's budget deficit and to make recommendations to Congress and the President. The NEC is a Federal advisory committee covered by the Sunshine Act.

In December, 1988, the Commission planned a closed door meeting to discuss whether to use economic assumptions supplied by the Congressional Budget Office or assumptions provided by the Office of Management and Budget in its deficit deliberations. At the meeting, the Commission was to receive senior budget officials' economic assessments regarding interest rates, unemployment, infla-

tion and economic growth. The Commission closed the meeting based on Sunshine exemptions 9(b) and . . . NEC attorneys argued that premature disclosures of the Commission's deliberations could have frustrated its proposed action. They also argued that financial information discussed at the meeting could have affected financial markets. The Bureau of National Affairs, *The Washington Post, The Wall Street Journal, Business Week,* and Public Citizen filed suit when NEC scheduled the closed meeting.

U.S. District Judge Joyce Hens Green ordered the Commission to open the meeting. As she stated, the public had the right to know the issues in the discussion as they developed at the meeting. She rejected the Commission's argument that its discussions would negatively affect financial markets. As she stated, the "expressions to be presented by these officials are no different from the plethora of economic assessments and predictions . . . that inundate the public daily."

Rather than provide an open forum, the Commission cancelled the meeting altogether.

Senator Chiles, commenting on the court decision and NEC's action, said he understood the need to be frank when discussing sensitive matters, but stressed that the need for open government outweighed the Commission's need to meet behind closed doors. To further quote Judge Green, the commission's "insistence on shielding the debate as to budget options from public scrutiny directly contravenes the law . . . as it chops the core of our democratic society." That core, she said, was an "open, robust, unvarnished public debate illuminating pressing issues, concerns and policies that affect the lives of all citizens. . . ."

The NEC case is significant not only because it tested the Sunshine Act. The case demonstrated the Act's strength and lasting nature.

V. GOVERNMENT IN THE SUNSHINE ACT COMPLIANCE AT SELECTED AGENCIES

A. Comments

At the request of the Senate Subcommittee on Federal Spending, Budget and Accounting, GAO completed an analysis of twelve Federal agencies and their compliance with the Government in the Sunshine Act. The study was completed in July 1988 and covered the twelve agencies during the 1986 calendar year.

In general, GAO found a high degree of agency compliance with the specifics of the law. GAO determined compliance with the notification and administrative provisions of the Act (adequate public notice of meetings, properly recorded votes to close meetings to the public, complete transcripts of meetings, annual reports to Congress) by reviewing records of closed or partially closed meetings. GAO randomly selected four meetings at each of the twelve agencies and selected tapes or transcripts to verify whether the meeting discussions agreed with the exemptions cited to close the meeting and if there was agreement between matters discussed and the announced subjects. The study is included in this report.

It is important to note that the study covered only a very limited number of *closed* meetings.

While the study showed most agencies are complying with the letter of the Sunshine law, GAO was unable to measure compliance with the intent of the law. This is where most of the problems seem to occur. According to the Act, except for meetings or portions of meetings where disclosure of information could be detrimental to the public interest, "every portion of every meeting of an agency shall be open to public observation." This has been interpreted to mean that even in those instances where the Act permits a meeting to be closed, agencies are advised to open the meeting if the public interest so requires. As this report has noted, the NRC and the Legal Services Counsel are just two agencies which have failed to comply with this intent.

Detecting violations of the intent of the Sunshine Act is difficult. While it was helpful, the GAO report did not provide any insight into the content of open meetings and provided limited insight into the content of closed meetings. Over the past several years, at some agencies, the detail of agency business actually discussed in open meetings has slowly declined. Instead of public debate and discussion among agency members as envisioned by the law, in depth discussion has taken place behind closed doors. Members then meet in public and after nominal (or no) discussion ratify the decision. The so-called loss of collegiality in some agencies, whatever the cause, may account for the decline in openness. The problems, though, can be more accurately attributable to the attitudes of agencies and their Chairmen.

In measuring Sunshine Act compliance, Wayne Granquist, Associate Director for Administrative Management at the Office of Management and Budget, made an important point. He said statistical representations of the number of meetings held, open, closed or partially closed cannot answer all questions about the implementation of the Sunshine Act. The difficulties lie less with the wording than with the attitudes of some agencies. (Statement of Wayne Granquist to the Subcommittee on Federal Spending Practices and Open Government, November 29, 1977.) These comments should be considered when reviewing and evaluating the GAO report and similar statistical studies of the Sunshine Act.

B. REPORT

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Federal Spending, Budget, and Accounting, Committee on Governmental Affairs, U.S. Senate

July 1988

INFORMATION DISCLOSURE

Government in the Sunshine Act Compliance at Selected Agencies

GAO/GGD-88-97

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-225451

July 20, 1988

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending,
Budget, and Accounting
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your June 8, 1987, request and subsequent agreements with the Subcommittee that we examine the Government in the Sunshine Act activities of 12 agencies.[1] As agreed, our objectives were to determine the extent that the agencies (1) adhered to selected requirements of the law for meetings held during calendar year 1986 and (2) provided certain supplemental information in their 1986 annual reports as requested by congressional subcommittees.

Results in Brief

In general we found a high degree of agency compliance with the selected provisions of the law we reviewed. In the few instances where we could not verify compliance, the problem appeared to be the result of incomplete agency documentation. Agency compliance with the requests by three congressional subcommittees to provide supplemental information in their annual reports was lower. We classified the requested information into 22 categories and found that the agencies varied in the extent they provided information on each of the categories, with only one agency covering all 22 categories.

Background

The Government in the Sunshine Act was enacted in 1976 and declares that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the federal government. The act applies to agencies headed by a collegial body composed of two or more individual members appointed by the President of the United States and confirmed by the U.S. Senate. Accordingly, the act requires those agencies to open their meetings to public observation, except in instances where the agencies find that disclosure of information discussed at the meetings could be detrimental to the public interest. In such instances,

[1]The 12 agencies reviewed were the: Equal Employment Opportunity Commission, Export-Import Bank of the United States, Federal Election Commission, Federal Labor Relations Authority, Federal Reserve System Board of Governors, Federal Trade Commission, Merit Systems Protection Board, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Postal Rate Commission, and Securities and Exchange Commission.

the law provides 10 exemptions, such as for national defense, foreign policy, or law enforcement reasons, and detailed procedures under which agencies can close or partially close meetings to the public.

Agencies subject to the Government in the Sunshine Act are required to follow several requirements. These include:

- providing public notices of their meetings indicating such items as the time, location, subject of the meeting, whether the meeting is open or closed to the public, and the name and phone number of an agency official designated to respond to requests for information about the meeting;
- recording members' votes to close meetings to the public accompanied by a written statement (called a "meeting statement") explaining the closing action, and supported by a certification by the chief legal officer that the decision to close was appropriate;
- maintaining complete transcripts and/or electronic recordings or minutes of meetings; and
- submitting an annual report to Congress on their compliance with the act.

Objectives, Scope, and Methodology

To determine compliance with the above notification and administrative requirements of the act, we reviewed the records of a total of 47 out of 477 closed or partially closed meetings held by the 12 agencies in 1986. We selected four meetings randomly at each of 11 agencies and reviewed all three of the closed or partially closed meetings at the 12th agency. Additionally, from the 47 meetings, we randomly selected 24 and reviewed tapes or minutes to verify (1) whether meeting discussions agreed with exemption(s) cited in closing the meeting, and (2) if there was agreement between meeting discussions and the announced subject(s). We compared the 12 agencies' 1986 Sunshine Act annual reports to the law and to the supplemental information requested. Because our sample of meetings closed or partially closed during 1986 was limited, our results are not projected either to the agencies selected or to the federal government. Appendix I contains the details on our objectives, scope, and methodology; appendix II provides details on the findings outlined below.

Public Notice

Overall compliance with public notice requirements was high. Of the 47 meetings reviewed we found 43 meetings in compliance with announcement requirements. We could not determine compliance for four meetings due to incomplete documentation.

Meeting Closing Procedures

Compliance with required meeting closing procedures was also high. Our results showed that for the 47 meetings reviewed,

- 46 meetings had recorded votes to close the meetings,
- 41 meetings had meeting statements, and
- 45 meetings had closure certifications from the chief legal officer.

Incomplete documentation prevented us from determining compliance for the remaining meetings. For example, in one agency a file containing meeting statements was lost; in another agency the record of vote and the meeting statement were missing from the meeting file.

Meeting Transcripts, Tapes/Minutes

Our analysis showed that the agencies had recorded, by tape or minutes, the proceedings in 46 of the 47 meetings. In addition, for 24 of the 47 meetings we reviewed tapes or minutes to determine (1) if the exemption(s) cited to close a meeting was supported by the meeting discussion and (2) if the announced subjects were actually discussed as publicized. We found a high degree of agreement. We were able to verify agreement between the meeting discussion and cited exemptions in 21 of the meetings. In addition, we verified that 21 meetings were held in accordance with the announced subjects.

We were unable to verify the remaining cases due to incomplete documentation. For example, at two agencies we found interruptions in the tape recordings; and at an agency that prepares minutes, the minutes were missing from the meeting file.

Agencies' Annual Reports

Our review of the 1986 Sunshine Act annual reports showed that all 12 agencies addressed the three categories of information required by the law—the number of open and/or closed meetings held; the reasons for closing meetings; and a description of litigation, if any, brought against the agency under the law, including any costs assessed as a result of the litigation.

Compliance with the supplemental information requested by three congressional subcommittees was lower than for information required by the law. We classified the requested information into 22 categories, such as steps taken to enhance public comprehension of subjects discussed. (See app. III for our classification of the requested information.) Agencies varied in the extent that they provided information on each of the 22 items. For example, one agency addressed each of the 22 items, while another addressed only 2 of the 22 items.

As requested by the Subcommittee, we did not obtain official comments from the agencies regarding the information contained in this report. However, we discussed the information presented with agency officials who acknowledged the documentation problems we found and indicated their commitment to maintaining proper documentation. As agreed with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the heads of the 12 agencies, the Director of the Office of Management and Budget, and other interested parties. Copies will be available to others upon request. Should you need further information, please contact Richard Caradine at 275-3532 or me at 275-8676.

Sincerely yours,

L. Nye Stevens

L. Nye Stevens
Associate Director

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Abbreviations

EEOC	Equal Employment Opportunity Commission
EIB	Export-Import Bank of the United States
FEC	Federal Election Commission
FLRA	Federal Labor Relations Authority
FRBG	Federal Reserve System Board of Governors
FTC	Federal Trade Commission
MSPB	Merit Systems Protection Board
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
OSHRC	Occupational Safety and Health Review Commission
PRC	Postal Rate Commission
SEC	Securities and Exchange Commission

Appendix I

Objectives, Scope, and Methodology

The objectives of our review were to determine whether certain agencies were in compliance with key administrative provisions of the Government in the Sunshine Act.

To determine Sunshine Act requirements we reviewed the law, researched the act's legislative history, identified and evaluated Administrative Conference of the United States guidance —"An Interpretive Guide to the Government in the Sunshine Act" —as well as guidance from congressional subcommittees on actions needed to implement and comply with the annual report provision of the act. We contacted organizations such as Common Cause and the Public Citizen Litigation Group and reviewed a variety of reports on the history and operations of the Government in the Sunshine Act.

On the basis of the Subcommittee's June 8, 1987, request and subsequent agreements, we made our review at the following 12 agencies:

Equal Employment Opportunity Commission
Export-Import Bank of the United States
Federal Election Commission
Federal Labor Relations Authority
Federal Reserve System Board of Governors
Federal Trade Commission
Merit Systems Protection Board
National Labor Relations Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Postal Rate Commission
Securities and Exchange Commission

We focused on Government in the Sunshine Act meetings closed or partially closed to the public that were held during calendar year 1986. The 12 agencies held 477 closed or partially closed meetings. Of this total we randomly selected four meetings at each of 11 of the 12 agencies and three meetings at the 12th agency for review. The 12th agency held only three closed or partially closed meetings in calendar year 1986, all of which we included in our review. For each of the selected meetings we examined the agency's compliance with provisions of the law pertaining to (1) providing notice to the public, including required information about the meeting; (2) documenting and recording the votes of the members to close a meeting or a portion; (3) documenting and maintaining a written explanation of the closing action, including a list of attendees; and (4) obtaining a chief legal officer certification that in the officer's

opinion the meeting may be closed to the public and stating each exemptive provision used.

To examine whether the subjects discussed in the closed/partially closed meetings (1) supported the exemptions cited by the agencies as authority to close a meeting and (2) agreed with the announced subjects, we listened to tape recordings and/or reviewed meeting minutes for 24 of the 47 meetings. Our selections consisted of two meetings randomly selected at each of the 12 agencies.

We reviewed each agency's 1986 Sunshine Act Annual Report to Congress for accuracy by verifying the number of meetings reported and their classification as open, closed, and partially closed. We also reviewed the reports' contents for compliance with requirements identified in the law and with other information requested for inclusion in future annual reports by congressional subcommittees in 1980 and 1985.

We designed our review to assess Sunshine Act compliance only at the agencies visited. Because our sample of meetings closed or partially closed during 1986 was limited, our results are not projected either to the agencies selected or to the federal government.

We did our work between August 1987 and March 1988 in accordance with generally accepted government auditing standards.

Appendix II

Detailed Results of Our Compliance Assessment of 1986 Closed or Partially Closed Meetings and Agencies' Sunshine Act Annual Reports

1986 Agency Sunshine Act Meetings

On the basis of our review of the 12 agencies' 1986 annual reports and available agency documentation, we determined that the total number of meetings held that were subject to the Sunshine Act equalled 704. We determined that the 12 agencies held 445 closed and 32 partially closed meetings for a combined total of 477 meetings.

Table II.1: 1986 Sunshine Act Meetings Held by Agency as Verified by GAO

Agency	Open	Closed	Partially closed	Total
EEOC	2	14	18	**34**
EIB	0	80	0	**80**
FEC	37[a]	41	0	**78**
FLRA	2	8	0	**10**
FRBG	16	98	0	**114**
FTC	2	38	0	**40**
MSPB	2	3	0	**5**
NLRB	2	20	3	**25**
NRC	109	42	7	**158**
OSHRC	8	23	0	**31**
PRC	4	7	0	**11**
SEC	43	71	4	**118**
Total	**227**	**445**	**32**	**704**

[a]Includes both open meetings and public hearings

Types of Meeting Announcements

While the Sunshine Act requires public notice of meetings, it provides agency heads with broad discretion as to the method used to announce the meeting. To determine the types of meeting notices used by agencies in announcing Sunshine Act meetings, we interviewed agency officials in conjunction with our review of meeting file documentation.

Table II.2 shows that all 12 agencies used one or more types of announcements for each of the 47 meetings reviewed. Eight of the 12 agencies used three or more types of announcements.

II.2: Types of Meeting Announcement, by Agency

Agency	Posted notice	Recorded telephone message	Press release/ mailing	Federal Register	Total
EEOC	X	X	X	X	4
EIB	X				1
FEC	X		X	X	3
FLRA	X				1
FRBG	X	X	X	X	4
FTC	X	X	X		3
MSPB				X	1
NLRB	X		X	X	3
NRC	X	X	X	X	4
OSHRC	X				1
PRC		X	X	X	3
SEC	X		X	X	3

Meeting Announcements Documented and in Compliance

Table II.3 shows the results of our determination of whether meeting announcements were documented and in compliance with the act. To test meeting announcement compliance, we first determined whether a meeting announcement was documented. If so, we evaluated the announcement on the basis of the specific requirements of the law. Because the meeting announcement requirements vary according to the type of closing procedure followed in meetings, we divided meetings into two groups: those closed by regulation, referred to as expedited closing procedures; and those closed under nonexpedited procedures.

For 43 of the 47 meetings we reviewed, we found documentation indicating that these meetings were announced. This documentation included a Federal Register notice and/or a prepared meeting notice for posting on the agencies' bulletin boards. We determined that agencies met all requirements for the 43 meetings where notices were documented.

For meetings closed under expedited procedures, agencies are required to provide for such closure in their regulations and to announce these meetings as soon as practical. Agencies have no time requirement as to when the announcement must be issued nor are they required to announce such meetings in the Federal Register. We determined that 28 of the 43 meetings were closed under expedited procedures. For these meetings, each agency had appropriately provided for the use of expedited procedures in its regulations and had documentary evidence of an announcement for each meeting.

For meetings closed under nonexpedited procedures, agencies are required to announce meetings at least 7 days in advance and to publish meeting information in the Federal Register. For the 15 meetings closed under nonexpedited procedures, we found that the agencies published notices in the Federal Register and filed these notices with the Federal Register 7 or more days in advance.

For the remaining 4 of the 47 meetings reviewed, all held by the Export-Import Bank, we could not determine whether the meetings were announced. EIB agency meeting files did not contain evidence of a separately prepared meeting notice for the four meetings reviewed. Agency officials told us they post a copy of the general counsel's certification for closure of the meeting along with a short agenda, rather than prepare a separate notice. While we found both documents in the four meeting files, we could not verify that they had been posted for the meetings because each document lacked a bulletin board posting date.

Table II.3: Meeting Announcements Documented and in Compliance, by Agency

Agency	Number of meetings reviewed	Meeting notice documented	Meeting notice not documented	Meetings in announcement compliance
EEOC	4	4	0	4
EIB	4	0	4	0
FEC	4	4	0	4
FLRA	4	4	0	4
FRBG	4	4	0	4
FTC	4	4	0	4
MSPB	3[a]	3	0	3
NLRB	4	4	0	4
NRC	4	4	0	4
OSHRC	4	4	0	4
PRC	4	4	0	4
SEC	4	4	0	4
Total	**47**	**43**	**4**	**43**

[a]MSPB held only three closed meetings in 1986

Closing Procedures Documented in Agency Meeting Files

The Sunshine Act requires that for each closed meeting, agencies (1) take a recorded vote to close the meeting; (2) prepare a meeting statement setting forth the time and place of the meeting and the persons expected to attend; and (3) have their general counsel or chief legal officer prepare a certification saying that in his or her opinion, the meeting may be closed to the public and stating the relevant exemptions that apply.

Table II.4 shows that we were able to verify compliance with these provisions for the majority of the meetings. In 46 of the 47 meetings, agency documentation substantiated that a recorded vote to close was taken. We found documentation indicating that meeting statements were prepared for 41 of the 47 meetings and that closure certifications were prepared for 45 of the 47 meetings reviewed.

Table II.4: Closing Procedures Documented in Agency Meeting Files, by Agency

Agency	Number of meetings reviewed	Recorded vote		Meeting statement		Closure certification	
		D	ND	D	ND	D	ND
EEOC	4	4	0	4	0	4	0
EIB	4	4	0	4	0	4	0
FEC	4	4	0	4	0	4	0
FLRA	4	3	1	3	1	4	0
FRBG	4	4	0	4	0	4	0
FTC	4	4	0	4	0	4	0
MSPB	3	3	0	2	1	3	0
NLRB	4	4	0	0	4	4	0
NRC	4	4	0	4	0	3	1
OSHRC	4	4	0	4	0	4	0
PRC	4	4	0	4	0	3	1
SEC	4	4	0	4	0	4	0
Total	**47**	**46**	**1**	**41**	**6**	**45**	**2**

D: Documented
ND: Not Documented

Meeting Record Agreement With the Cited Exemption(s) For Closure and Announced Subject Matter

To determine whether meeting discussions agreed with cited exemption(s) for closure and whether agency meetings were held in accordance with the announced subjects, we reviewed 24 agency meeting records. Table II.5 shows the results of this review.

Agency meeting records showed that meeting discussions fit cited exemptions in 21 of 24 meetings and that 21 of the 24 meetings were held in accordance with the announced subject. For the remaining meetings, incomplete documentation precluded us from making this determination.

For one meeting at EEOC and one meeting at PRC, we observed that the tape recording had been interrupted, precluding us from verifying agreement between meeting record and subject/exemptions cited for closure. We faced a similar situation for one meeting at FLRA, where we found no meeting minutes in the file documentation.

Table II.5: Meeting Record Agreement With the Cited Exemption(s) For Closure and Announced Subject Matter

Agency	Number of meetings reviewed	Type of record	Agreement with cited exemptions(s)		Agreement with subject matter	
			V	CNV	V	CNV
EEOC	2	Tape	1	1	1	1
EIB	2	Tape	2	0	2	0
FEC	2	Tape	2	0	2	0
FLRA	2	Minutes	1	1	1	1
FRBG	2	Tape	2	0	2	0
FTC	2	Minutes	2	0	2	0
MSPB	2	Minutes	2	0	2	0
NLRB[a]	2	Minutes	2	0	2	0
NRC	2	Tape	2	0	2	0
OSHRC	2	Tape	2	0	2	0
PRC	2	Tape	1	1	1	1
SEC	2	Tape	2	0	2	0
Total	**24**		**21**	**3**	**21**	**3**

V - Verified
CNV - Could not verify due to incomplete documentation

[a]For one meeting NLRB held a brief discussion on a subject not included in the meeting announcement. However, the discussion was limited to deciding to hold an open meeting in the future.

1986 Sunshine Act Annual Report Accuracy in Reporting the Number and Type of Meetings Held

To assess reported meeting count and meeting classification accuracy, we compiled a list of meetings from available agency documentation and compared this with meetings tabulated on each agency's 1986 Sunshine Act Annual Report.

Table II.6 shows that 6 of the 12 agencies were accurate in their annual reported count and classification of meetings as open, closed, and partially closed. In four of the remaining six, the agencies were not accurate in their reported count and classification. The remaining two agencies reported an accurate total meeting count but misclassified specific meetings that had been held.

For the four agencies with reported inaccurate meeting counts, two agencies (EEOC and NLRB) were off by one. In the case of SEC and FTC, our tabulation of meetings showed that SEC had undercounted by five meetings and FTC had overcounted by seven. For the two agencies with meeting misclassifications only, both FEC and MSPB misclassified one meeting in their annual reports; however, their total meeting counts were accurate.

II.6: 1986 Sunshine Act Annual Report Accuracy in Reporting the Number and Type of Meetings Held, by Agency

	Meeting count and classification		
Agency	Accurate count and classification	Inaccurate count and classification	Inaccurate classification only
EEOC		X	
EIB	X		
FEC			X
FLRA	X		
FRBG	X		
FTC		X	
MSPB			X
NLRB		X	
NRC	X		
OSHRC	X		
PRC	X		
SEC		X	
Total	**6**	**4**	**2**

1986 Sunshine Act Annual Reporting Completeness in Addressing Legally Required and Congressionally Requested Information

Table II.7 shows 1986 Sunshine Act Annual Report completeness by comparing report content with requirements of the law as well as additional information requested by congressional subcommittees with oversight responsibility. The Sunshine Act specifically requires each agency to submit the following types of information in its Sunshine Act Annual Report:

"...a tabulation of the total number of agency meetings open to the public, the total number meetings closed to the public..."

"...the reasons for closing such meetings..."

"...a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency)..."

In addition to these requirements in the law, three congressional subcommittees asked agencies to provide additional information in their annual reports. In a 1980 letter, the Senate Subcommittee on Federal Spending Practices and Open Government and the House Subcommittee on Government Information and Individual Rights asked each agency subject to the Sunshine Act to provide certain supplemental information in future reports. In 1985 the Senate Subcommittee on Intergovernmental Relations sent a letter asking for similar information. In total, we classified the supplemental information requested in the two letters into 22 categories (listed in app. III).

Our review showed that all 12 agencies addressed all three information categories required by law in their 1986 Sunshine Act Annual Report. We found that 10 agencies addressed between 15 and 22 of the 22 additional categories identified in the guidance provided by Congress. The remaining two agencies addressed only 2 and 7 of the additional 22 categories.

Table II.7: 1986 Sunshine Act Annual Reporting Completeness in Addressing Legally Required and Congressionally Requested Information, by Agency

Agency	Public Law 94-409 requirements addressed	Total number of 22 additional categories addressed	Specific categories not addressed (see app. III)
EEOC	Yes	2	3,4-22
EIB	Yes	17	11-13,15,17
FEC	Yes	18	8,11-13
FLRA	Yes	18	7,8,15,19
FRBG	Yes	21	19
FTC	Yes	22	All addressed
MSPB	Yes	21	18
NLRB	Yes	19	6,15,19
NRC	Yes	21	5
OSHRC	Yes	19	6,15,19
PRC	Yes	15	5,6,8,9,15,17,19
SEC	Yes	7	4-10,14-17,19-22

Supplemental Information Requested by Congressional Subcommittees to Be Included in Agency Annual Reports

	The 1980 request from the Senate Subcommittee on Federal Spending Practices and Open Government and the House Subcommittee on Government Information and Individual Rights and the 1985 request from the Senate Subcommittee on Intergovernmental Relations asked agencies to provide certain supplemental information in their Sunshine Act annual reports. We classified the information requested into 22 categories.
	(1) Agency name
	(2) Calendar year
	(3) Agency policy regarding budget meetings, meetings at which congressional testimony is discussed, and briefings of agency members by staff
Notation Voting	(4) Description of procedure
	(5) Public availability of records involved in reaching decisions by notation procedure (record of notational vote, circulated written materials that provide the basis of the vote, and any other methods employed to explain reasoning of decisions reached through notational voting)
Public Observation	(6) Discussion of measures employed to ensure public observation and comprehension of subject matter discussed at meetings
	(7) Availability of staff papers, reports, and other background information
	(8) Specific procedures for making such background or working papers available to the public
	(9) Agency's policy with respect to use of cameras and recording devices by public observers at open meetings
Public Notice	(10) Public locations of meeting notices
	(11) Tabulation of the number of days' notice given for all of the agency's meetings

(12) Number of times less than 7 days' notice was given to the public

(13) In cases of (12) above, the number of days before the meeting when notice was given[1]

(14) Public Interest—Discussion of procedure established for consideration of the public interest in determining to open or close a meeting

Transcripts, Recordings, and Minutes of Closed Meetings

(15) Discussion of procedures used to review periodically the continued application of an exemption to transcripts, recordings, and minutes of closed meetings

(16) Discussion of procedures used to make available to the public transcripts, recordings, and minutes

(17) Provide copy of any index system prepared by the agency to assist the public in obtaining and using transcripts, recordings, and minutes

(18) Tabulation of the total number of requests the agency received for transcripts or for the opportunity to listen to recordings of closed meetings and the number of requests granted or denied

(19) Description of review procedures a request is given, including by whom, and how long it takes the agency to respond to requests and to complete such review

(20) Requests to Open—Description of procedures for an individual to request that an agency meeting be open, including any procedures for agency reconsideration of a prior decision to close a meeting

(21) Formal Complaints—Description of substantive complaints agency has received on its Sunshine procedures and practices, including a discussion of the agency's disposition of each such complaint

(22) Ex Parte Communications—Provide a copy of agency guidance supplied to members and staff regarding ex parte communications

[1]Requested in the 1985 Senate Subcommittee letter only

*U.S. G.P.O. 1988-201-749:80194

VI. CONGRESSIONAL RESEARCH SERVICE REPORTS

GOVERNMENT IN THE SUNSHINE: PUBLIC ACCESS TO MEETINGS HELD UNDER THE GOVERNMENT IN THE SUNSHINE ACT, 1979-1984

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May 7, 1986

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GOVERNMENT IN THE SUNSHINE: PUBLIC ACCESS TO MEETINGS HELD UNDER THE GOVERNMENT IN THE SUNSHINE ACT, 1979-1984

INTRODUCTION

The "Government in the Sunshine Act" rests on the premise that the Federal Government should conduct its activities as openly as possible. The Act declares that the "public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government."[1] Accordingly, the Act requires multi-headed executive branch agencies and independent agencies[2] to open their meetings to the public. Except for meetings or portions of meetings where disclosure of information could be detrimental to the public interest, "every portion of every meeting of an agency," says the Act, "shall be open to public observation."[3] Even in those instances where the Act permits a meeting to be closed, the agencies are advised to open the meeting if the public interest so requires.[4]

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[1] Public Law 94-409; 90 Stat. 1241.

[2] Agencies that are "headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency." 5 U.S.C. 552(a)(1).

[3] 5 U.S.C. 552b(b), (c).

[4] Richard K. Berg and Stephen H. Klitzman. An Interpretative Guide to the Government in the Sunshine. Washington, Administrative Conference of the United States. 1978. p. 17.

This report examines the extent to which meetings held by 59 executive branch and independent agencies, which reported or made the data available pursuant to the Government in the Sunshine Act were open, closed, or partly closed to the public during the years 1979 through 1984. (The 59 agencies are listed in Appendix B.) It also documents the extent to which each of the exemptions granted by the Sunshine Act were invoked for closing meetings, the extent to which expedited closing procedures allowed under the Act were used to close meetings, the extent to which notation voting was used in lieu of deliberative meetings, and the extent to which agencies held meetings with less than the seven-day notice normally required by the Act.

Sources and Limitations of the Data

The information upon which this CRS report is based was taken from the following sources:

Annual reports submitted by the agencies to Congress under the provisions of the Sunshine Act;

Telephone conversation with agency officials; and
Sunshine Act notices in the Federal Register.

The annual reports from the agencies were the principal sources for data presented here, but in some instances agencies did not submit annual reports or did not include all of the data required by the Act. The two additional sources were drawn upon both to provide the missing data and to provide other data needed for this study but outside the reporting requirements of the Act. Nevertheless, there remain several instances of missing data. Officials in some agencies said that the information requested was unavailable or that it would be too costly and time-consuming to retrieve; and in some instances the information in the Sunshine Act notices in the Federal Register was incomplete.

I. TYPES OF MEETINGS: OPEN, CLOSED, PARTLY CLOSED

Under the Government in Sunshine Act, meetings held by multi-headed agencies are either open or closed, or a combination of the two, i.e., partly pen and partly closed. (Hereafter, meetings that are partly open and partly closed are referred to as partly closed.) If on a given date some matters are to be considered in closed session and some in open session, an agency may schedule either one meeting that will be partly closed, or two meetings, one open and one closed.

In order to provide some uniformity regarding partly closed meeting designations, the Senate Committee on Governmental Affairs and the House Committee on Government Operations recommended that if any two or more consecutive sessions--one open and one closed--are held continuously without an announced recess period between them, those sessions should be designated as one meeting that is partly closed.

If two or more such sessions are held consecutively, but with an announced recess period between them, the Committees recommended that each session be designated as a separate meeting, one open and one closed. The decision was left to the individual agencies to determine whether a recess should be held between consecutive sessions.

Some agencies have no recess between consecutive sessions, and therefore count such sessions as one partly closed meeting. Other agencies have a recess between sessions and consequently count each session as a separate meeting, one open and one closed.

II. EXTENT OF OPENNESS

The number of meetings held varied considerably from agency to agency. While some met two days a week, others convened only a handful of times a year. The length of meetings also varied considerably from agency to agency. Some meetings lasted an hour or less, while others lasted one or two full days. Generally, agencies whose meetings lasted two or three days held only a few meetings a year.

For the years 1979-1984, 11,378 meetings were held—4,594 (40 percent) were open, 4,879 (43 percent) were closed, and 1,905 (17 percent) were partly closed. As the figures in Table 1 indicate, these percentages remained relatively unchanged over the six years examined. The total number of meetings dropped, however, from a high of 2,297 in 1980 to a low of 1,617 in 1984, a decline of 31 percent.

TABLE 1. Extent of Openness of Sunshine Act, 1979-1984

Year	Number of meetings	Open		Closed		Partly closed	
		Number	Percent	Number	Percent	Number	Percent
1979	2,156	884	41	911	42	361	17
1980	2,297	976	43	965	42	356	15
1981	1,895	726	38	817	43	352	19
1982	1,794	738	41	746	42	310	17
1983	1,619	607	37	733	45	279	17
1984	1,617	663	41	707	44	247	15
Total	11,378	4,594	40	4,879	43	1,905	17

Considerable variation exists in the number of meetings held by each agency over the six-year period. Twenty-seven of the fifty-nine agencies held one hundred or more meetings. Twelve agencies held twenty-five or fewer

meetings. Eight agencies held 5,556 or 49 percent of all the meetings. These figures remained proportionately consistent over the years. (See Appendix A, tables A1-A7.)

During the same period, 29 agencies held open meetings one half or more of the time; 16 agencies closed one half or more of their meetings; and 11 agencies partly closed one half or more of their meetings. The number of agencies in each category fluctuated from year to year, as summarized in table 2, below.

TABLE 2. Number of Agencies Holding Open, Closed, or Partly Closed Meetings One Half or More of The Time, 1979-1984

	Number of Agencies, 50% of Whose Meetings Were--		
Year	Open	Closed	Partly closed
1979	29	12	10
1980	26	16	10
1981	25	18	16
1982	28	15	14
1983	23	16	8
1984	27	17	8

Of the sixteen agencies that closed over fifty percent of their meetings (see Table 3), twelve closed them over seventy-five percent of the time.

TABLE 3. Agencies Closing Over 50 Percent of Their Meetings

Agency	Closed meetings	Percent of all meetings
Board for International Broadcasting	18	100
Chrysler Corporation Loan Guarantee Board*	13	76
Commodity Futures Trading Commission	525	77
Export Import Bank	470	100
Federal Election Commission	288	52
Federal Home Loan Mortgage Corporation	49	79
Federal Labor Relations Authority	167	97
Federal Reserve Board	626	76
Federal Trade Commission	221	67
Merit Systems Protection Board	32	82
National Credit Union Administration	122	52
National Labor Relations Board	137	97
Occupational Safety & Health Review Comm.	167	91
Postal Rate Commission	147	88
Security Exchange Commission	521	62
United States Parole Commission	183	86

* Provided data only for two years.

III. SUNSHINE ACT EXEMPTIONS USED TO CLOSE MEETINGS

Under the Government in the Sunshine Act, meetings may be closed if their subject matter falls into any one of ten general categories. Because such meetings are exempt from the open meeting provisions of the Act, the provisions covering each one of these ten categories are popularly referred to as exemptions under the Sunshine Act. Briefly, these ten exemptions cover the following: (1) national defense matters; (2) internal personnel rules; (3) matters specifically exempted by statute; (4) trade secrets; (5) criminal accusation; (6) personal privacy; (7) law enforcement; (8) regulation of financial institutions; (9) premature disclosure—broken down into (9A) premature disclosure/financial speculation or endanger institution, and (9B) premature disclosure/frustrate implementation; and (10) civil action or formal

agency adjudication. [5 U.S.C. 552b(c)(1) through (10)] A summary of these provisions is found in Appendix C. It should be stressed that an agency is not required to close a meeting falling within one of these exemptions and may hold an open meeting if it determines that the public interest so requires.

One or more of the above exemptions may be used when closing a meeting. Consequently, the number of exemptions cited to close a meeting is greater than the number of closed meetings. Most meetings have more than one item on their agenda and frequently more than one exemption is cited for each item being considered.

When closing a meeting, an agency must follow certain procedures. A majority of the voting members of the agency must vote to close the meeting. Within one day it must make publicly available the vote of each member and "a full written explanation" of the decision to close the meeting "together with a list of all persons expected to attend the meeting and their affiliation." [5 U.S.C. 552b(d)(3)] This information must be published in the Federal Register. Finally, the Office of the General Counsel of the agency must certify that the meeting can be closed under one of the appropriate exemptions.

Fifty-three of the fifty-nine agencies closed at least one of their meetings during the six-year span. (See Appendix A, table A1.) Altogether, a total of 26,019 exemptions were cited to close 4,879 meetings and partly close another 1,905 meetings. (See Appendix A table A8.) On the average just under four exemptions were used for each meeting or section of meeting that was closed.

The most frequently used were those involving civil action or formal agency adjudication (6,699 times), law enforcement (4,290 times), and premature disclosure (4,894 times). The least often used exemptions were those embracing (1) national defense matters (163 times) and matters specifically exempted by

statute (959 times). These rankings remained consistent over the six year period.

IV. USE OF EXPEDITED CLOSING PROCEDURE TO CLOSE MEETING

The expedited closing procedure is designed to allow certain agencies to dispense with most of the normal closing procedures that an agency must follow. These agencies generally conduct sensitive business on short notice, and either regulate financial institutions, securities and commodities, or play a major role in adjudicatory proceedings. When the expedited closing procedure is used there is no need to explain the rationale for the decision nor to list the persons expected to attend the meeting. Waived also is the requirement that notice of a meeting be announced seven days before the meeting is held and that it be published in the Federal Register. When closing a meeting under the expedited closing procedure, an agency does not have to take a vote in advance of the meeting.

Any agency that can properly close a majority of its meetings under any of the following four exemptions, (4) trade secrets, (8) regulation of financial institutions, (9A) premature disclosure/financial speculation or endanger institution, or (10) civil action or formal agency adjudication, or a combination thereof, may use the expedited closing procedure to close its meetings. [5 U.S.C. 552b (d)(4)]. The procedure itself cannot be used to close a meeting; it can be used only in conjunction with one of the four exemptions.

At the present time twenty-two agencies have declared themselves eligible to use the expedited closing procedure, but it appears that only fourteen have

been using it.[5] Of the fourteen, only six listed in their annual reports each year or some of the years the number of times they used the procedure to close meetings.[6] It is not surprising that this information is not in the annual reports, since the agencies are required neither to record the number of times they use the procedure nor to report its use to Congress. During telephone conversations with agency officials it appeared that some of them were uncertain about the proper use of the expedited closing procedure, and some said they did not know whether their agency used the procedure. Some officials believed it was used most of the time when a meeting was closed; others said that it was used only in conjunction with civil action or formal agency adjudication. (See Appendix D.) In one instance officials said that their agency was not using the procedure, although sunshine meeting notices in the Federal Register indicated that it was being used.

As a result of the confusion on the part of agency officials regarding the use of the expedited closing procedure, as well as incomplete and missing data, it is not possible to compile comprehensive statistics about agency use of the procedure to close their meetings. Of the fourteen agencies using the expedited closing procedure, only seven provided data regarding its use and three of them gave incomplete figures--one gave no data for 1979; one gave data only for 1979; and one gave no data for 1983 and 1984.

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5 These fourteen include the Commodity Futures Trading Commission (CFTC), Equal Employment Opportunities Commission (EEOC), Export Import Bank (EIB), Federal Election Commission (FEC), Federal Home Loan Bank Board (FHLBS), Federal Home Loan Mortgage Corporation (FHLMC), Federal Labor Relations Authority (FLRA), Federal Reserve Board (FRS), Federal Trade Commission (FTC), National Labor Relations Board (NLRB), Nuclear Regulatory Commission (NRC), Postal Rate Commission (PRC), Securities and Exchange Commission (SEC), and United States Parole Commission (USPC). (See Appendix D)

6 The six providing data in their annual reports included the CFTC, EIB, FHLBB, FHLMC, FRS, and FTC. One, the USPC provided the data by telephone. The seven that provided no data included the EEOC, FEC, FLRA, NLRB, NRC, PRC, and SEC.

The seven agencies that provided data reported using the expedited closing procedure 1,060 times, which amounted to 60 percent of the time they closed their meetings in the years for which they provided data. Table 4 lists the agencies and summarizes the number of times they used the procedure.

Table 4. Agencies Reporting Use of Expedited Closing Procedure (ECP) For All or Some of the Review Period, 1979-1985

Agency	Meetings closed using ecp	Percent of all closed meetings	Years for which data provided
Commodity Futures Trading Commission	48	37	1979
Export-Import Bank	470	(100	1979-1984
Federal Home Loan Bank Board	94	(99	1980-1984
Federal Home Loan Mortgage Corporation	33	(85	1979-1982
Federal Reserve System	138	22	1979-1984
Federal Trade Commission	95	43	1979-1984
United States Parole Commission*	182	99	1979-1984
Total	1,060	60	

* Data provided by telephone.

Although it is obviously impossible, given the data, to determine the total number of meetings closed under the expedited procedure, the available partial figures indicate that they comprised at least 22 percent (1,060 out of 4,879) of all the meetings closed from 1979 through 1984.

V. MEETINGS HELD WITH LESS THAN SEVEN DAY ADVANCE NOTICE

The Government in the Sunshine Act requires Federal agencies to give public notice at least seven days in advance of agency meetings. The notice is to state the time, place, and subject matter of the meeting; if it is to be open or closed to the public; and the name of an agency official who can

provide information about the meeting. [5 U.S.C. 552b(c)(1)] There are two exceptions to this requirement. First, less than the seven-day notice may be given if a majority of the members of the agency votes by recorded vote that agency business requires less than the seven-day notice. [5 U.S.C. 552b(e)(1)] Second, the seven-day notice is also waived when the agency uses the expedited closing procedure to close a meeting. In both instances, however, public notice of the meeting must be given "at the earliest practical time." [5 U.S.C. 552b(d)(4) and (e)(1)]

Agencies comply with the seven-day requirement by posting a notice on bulletin boards in the agency, maintaining a mailing list of interested people to notify, sending notices to trade journals and other publications, making the information available in phone recordings, and several other methods. In addition, the Act requires that immediately following the public announcement the information be submitted for publication in the Federal Register. [5 U.S.C. 552b(c)(3)] (Notice of meetings closed under the expedited closing procedure need not be sent to the Federal Register.)

The Act requires the advance public notice of a meeting and publication in the Federal Register in order to ensure that the public not only be informed of the meeting, but that it be meaningfully informed. However, when the advance public notice is issued seven days before the meeting, the earliest it appears in the Federal Register is five days before the meeting because of the usual two day lag period between submission and publication. If the submission is one or two days late or is on a Thursday or Friday, the notice will not appear in the Federal Register until three or four days before the meeting.

The information supplied by the agencies in their annual reports regarding the number of meetings held with less than a seven-day public announcement

refers to the date the announcement was made, not to the date it was published in the Federal Register.

As with the information regarding the use of the expedited closing procedure, many of the agencies either failed to provide data or provided incomplete data in their annual reports about the number of meetings they held with less than a seven-day advance notice. As a result, comprehensive statistics cannot be compiled. Of the fifty-nine agencies, thirty-two reported that they held meetings with less than a seven-day notice and fourteen reported that they held no such meetings. For the other thirteen agencies (see Appendix D) it was not possible to obtain information about whether they held any such meetings.

Only four of the thirty-two agencies that held meetings with less than a seven-day notice provided complete data. This data, together with the partial data provided by the other twenty-eight agencies, indicate that 1,538 such meetings were held, which accounted for 33 percent of all the meetings (excluding those closed under the expedited closing procedure) they held in the years for which they provided the data. (See Appendix A, table A9.) The partial data also indicate that at least 15 percent (1,538 out of 10,318) of all the meetings (excluding those closed under the expedited closing procedure) held were held with less than the required seven-day advance notice.

VI. NOTATION VOTING

Agencies may sometimes avoid holding Sunshine Act meetings by reaching decisions though the use of notation voting or seriatim notation procedure (i.e., members vote sequentially on paper on the basis of circulated written materials) instead of voting after joint deliberation in a meeting. At least thirty-six agencies use notation voting; fifteen agencies do not use the

procedure; and eight did not indicated in their annual reports whether they used the procedure. (See Appendix E.)

When an issue is to be decided by notation voting, the normal procedure is to circulate the pertinent paperwork to each member of the agency. Three of the agencies reported that the chairman made the determination of whether to use notation voting, two reported that Commissioners decided, one reported that the Duty Officer decided, and one reported that the Executive Secretary decided. Eight agencies reported that a Member could request that an issue initially subject to decision by notation voting be decided instead by joint deliberation in a meeting.

Nearly all of the agencies using the notation voting procedure make information regarding the vote and issue available to the public. At least twenty-two of the agencies make minutes or resolutions available, and twelve make circulated written material--including that prepared by the staff--available unless it is exempt under the Freedom of Information Act.

Five agencies indicated in their reports that they do not release to the public written material prepared by the staff. Two of the agencies did not provide any information about their information policy.

Agencies used the procedure mostly for routine, non-controversial issues. Some agencies indicate, however, that notation voting was used for other than routine issues. For example, the Copyright Royalty Tribunal used the procedure to decide issues in three cable distribution proceedings; the Federal Elections Commission uses it for "sensitive" and "non-sensitive" issues; the Federal Deposit Insurance Corporation uses the procedure "on occasion" when it is necessary for "efficient operation of the Corporation;" the Interstate Commerce Commission uses it for all but "the most important policy issues;" the National Mediation Board uses the procedure for a "substantial portion of agency

business" "in lieu of a more formalized and time-consuming joint deliberative process;" the National Transportation Safety Board uses the procedure for all issues except major accident reports and special studies; and the Nuclear Regulatory Commission uses the procedure for matters that "normally do not have far reaching implications," including issues that by law require formal vote in open meeting but that are not sufficiently complex matters requiring discussion.

APPENDIX A: AGENCY DATA

TABLE A1. Sunshine Meetings, 1979-1984

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
ADF[1]	7	3	3	13	54	23	23
BIB	0	18	0	18	0	100	0
CAB	71	35	111	217	33	16	51
CCR	61	0	11	72	85	0	15
CCC	13	7	12	32	41	22	38
CCLGB[2]	4	13	0	17	24	76	0
CFTC	158	525	0	683	23	77	0
CEQ	46	1	0	47	98	2	0
CPSC	230	75	137	442	52	17	31
CRT[3]	249	0	1	250	100	0	0
DIDC[4]	14	1	0	15	93	7	0
EEOC	22	3	214	239	9	1	90
EIB	0	470	0	470	0	100	0
FCC	210	177	0	387	54	46	0
FCIC[5]	5	0	0	5	100	0	0
FDIC	10	281	278	569	2	49	49
FEC	226	288	36	550	41	52	7
FERC	200	79	0	279	72	28	0
FFCB[6]	13	0	25	38	34	0	66
FHLBB	90	106	97	293	31	36	33
FHLMC	1	49	12	62	2	79	19
FLRA	6	167	0	173	3	97	0
FMC	100	48	187	335	30	14	56
FMSHRC	225	30	14	269	84	11	5
FRS	189	626	9	824	23	76	1
FTC	66	221	45	332	20	67	14
FCSC	140	0	0	140	100	0	0
HSTSF[3]	6	0	4	10	60	0	40
IAF	20	2	3	25	80	8	12
ICC	45	6	1	52	87	12	2
LSC	68	3	35	106	64	3	33
MB[7]	48	8	8	64	75	13	13
MRC	48	0	0	48	100	0	0
MSI	18	0	5	23	78	0	22
MSPB	7	32	0	39	18	82	0
NCH[8]	35	0	1	36	97	0	3

TABLE A1: Sunshine Meetings, 1979-1984--Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
NCLIS	33	6	8	47	70	13	17
NCSFA[7]	10	0	0	10	100	0	0
NCUA	113	122	0	235	48	52	0
NhRC	21	1	3	25	84	4	12
NLRB	2	137	2	141	1	97	1
NMB	69	0	0	69	100	0	0
NSB	1	2	55	58	2	3	95
NTSB	128	18	77	223	57	8	35
NRC	704	287	185	1176	60	24	16
NRPC[5]	0	0	24	24	0	0	100
OPIC	0	1	31	32	0	3	97
OSHRC	10	156	5	171	6	91	3
PNEPCPC[9]	72	0	24	96	75	0	25
PRC	11	147	10	168	7	88	6
RRB	13	4	34	51	25	8	67
SEC	299	521	22	842	36	62	3
TVA	139	0	0	139	100	0	0
USITO	253	12	61	326	78	4	19
USPC	28	183	3	214	13	86	1
USPS	10	9	62	81	12	11	77
USRA[10]	0	0	42	42	0	0	100
USSFC[4]	5	0	7	12	42	0	58
USUHS	22	0	4	26	85	0	15
Total	4594	4880	1908	11382	40	43	17

[1]Data are for 1983-84 only.

[2]Data are for 1980-81 only; exempted from Sunshine Act in 1982.

[3]Data for 1983 are not included.

[4]Data are for 1980-82 only; exempted from Sunshine Act in 1983.

[5]Data are for 1981-82 only; exempted from Sunshine Act in 1983.

[6]Data for 1984 are not included.

[7]Agency abolished in 1983.

[8]Data for 1979 are not included.

[9]Data are for 1981-84 only

[10]Data are for 1979-82; exempted from Sunshine Act in 1983.

TABLE 2. Sunshine Meetings Held in 1979

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
BIB	0	4	0	4	0	100	0
CAB	42	11	21	74	57	15	28
CCR	14	0	4	18	78	0	22
CCC	3	0	2	5	60	0	40
CFTC	29	131	0	160	18	82	0
CEQ	15	1	0	16	94	6	0
CPSC	54	12	24	90	60	13	27
CRT	4	0	0	4	100	0	0
EEOC	10	0	44	54	19	0	81
EIB	0	115	0	115	0	100	0
FCC	46	31	0	77	60	40	0
FCIC	*	*	*	*	*	*	*
FDIC	4	22	45	71	6	31	63
FEC	16	28	35	79	20	35	44
FERC	50	25	0	75	67	33	0
FFCB	7	0	0	7	100	0	0
FHLBB	39	11	0	50	78	22	0
FHLMC	0	6	4	10	0	60	40
FLRA	2	57	0	59	3	97	0
FMC	18	17	38	73	25	23	52
FMSHRC	40	6	6	52	77	12	12
FRS	41	86	9	136	30	63	7
FTC	15	51	8	74	20	69	11
FCSC	42	0	0	42	100	0	0
HSTSF	1	0	1	2	50	0	50
IAF	4	0	0	4	100	0	0
ICC	19	3	1	23	83	13	4
LSC	14	3	4	21	67	14	19
MB	9	1	3	13	69	8	23
MRC	8	0	0	8	100	0	0
MSI	4	0	0	4	100	0	0
MSPB	5	4	0	9	56	44	0
NCH	*	*	*	*	*	*	*
NCLIS	5	1	0	6	83	17	0
NCUA	15	12	0	27	56	44	0
NhRC	5	0	0	5	100	0	0
NLRB	1	36	0	37	3	97	0
NMB	13	0	0	13	100	0	0
NSB	0	0	9	9	0	0	100
NTSB	29	3	12	44	66	7	27
NRC	119	57	36	212	56	27	17
NRPC	*	*	*	*	*	*	*
OPIC	0	0	6	6	0	0	100
OSHRC	8	34	0	42	19	81	0

TABLE A2. Sunshine Meetings Held in 1979--Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
PRC	2	15	5	22	9	68	23
RRB	0	4	5	9	0	44	56
SEC	67	98	0	165	41	59	0
TVA	29	0	0	29	100	0	0
USITO	20	0	25	45	44	0	56
USPC	5	27	0	32	16	84	0
USPS	6	0	5	11	55	0	45
USRA	0	0	12	12	0	0	100
USUHS	5	0	0	5	100	0	0
Total	884	911	361	2156	41	42	17

*Data not available

TABLE A3. Sunshine Meetings Held in 1980

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
BIB	0	5	0	5	0	100	0
CAB	17	7	14	38	45	18	37
CCR	10	0	1	11	91	0	9
CCC	1	2	1	4	25	50	25
CCLGB	4	8	0	12	33	67	0
CFTC	25	115	0	140	18	82	0
CEQ	21	0	0	21	100	0	0
CPSC	32	10	30	72	44	14	42
CRT	94	0	0	94	100	0	0
DIDC	5	1	0	6	83	17	0
EEOC	4	2	43	49	8	4	88
EIB	0	118	0	118	0	100	0
FCC	45	39	0	84	54	46	0
FCIC	*	*	*	*	*	*	*
FDI	1	26	53	80	1	33	66
FEC	49	58	0	107	46	54	0
FERC	48	21	0	69	70	30	0
FFCB	6	0	0	6	100	0	0
FHLBB	12	21	31	64	19	33	48
FHLMC	0	8	3	11	0	73	27
FLRA	2	49	0	51	4	96	0
FMC	44	3	23	70	63	4	33
FMSHRC	50	0	0	50	100	0	0
FRS	39	115	0	154	25	75	0
FTC	12	43	14	69	17	62	20
FCSC	29	0	0	29	100	0	0
HSTSF	1	0	1	2	50	0	50
IAF	5	0	0	5	100	0	0
ICC	12	0	0	12	100	0	0
LSC	13	0	1	14	93	0	7
MB	11	3	2	16	69	19	13
MRC	8	0	0	8	100	0	0
MSI	3	0	1	4	75	0	25
MSPB	0	12	0	12	0	100	0
NCH	4	0	0	4	100	0	0
NCLIS	8	3	4	15	53	20	27
NCUA	43	32	0	75	57	43	
NhRC	2	1	2	5	40	20	40
NLRB	0	29	0	29	0	100	0
NMB	12	0	0	12	100	0	0

*Data not available.

TABLE A3. Sunshine Meetings Held in 1980--Contined

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
NSB	0	0	10	10	0	0	100
NTSB	21	5	16	42	50	12	38
NRC	141	33	22	196	72	17	11
NRPC	0	0	11	11	0	0	100
OPIC	0	0	6	6	0	0	100
OSHRC	1	31	1	33	3	94	3
PRC	2	20	3	25	8	80	12
RRB	2	0	15	17	12	0	88
SEC	56	95	7	158	35	60	4
TVA	25	0	0	25	100	0	0
USITO	46	11	13	70	66	16	19
USPC	3	36	2	41	7	88	5
USPS	2	3	10	15	13	20	67
USRA	0	0	12	12	0	0	100
USSFC	0	0	3	3	0	0	100
USUHS	5	0	1	6	83	0	17
Total	976	965	356	2297	42	42	15

TABLE A4. Sunshine Meetings Held in 1981

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
ADF	*	*	*	*	*	*	*
BIB	0	3	0	3	0	100	0
CAB	10	6	19	35	29	17	54
CCR	10	0	1	11	91	0	9
CCC	0	4	4	8	0	50	50
CCLGB	0	5	0	5	0	100	0
CFTC	26	75	0	101	26	74	0
CEQ	0	0	0	0	0	0	0
CPSC	30	16	21	67	45	24	31
CRT	53	0	1	54	98	0	2
DIDC	4	0	0	4	100	0	0
EEOC	0	0	28	28	0	0	100
EIB	0	56	0	56	0	100	0
FCC	27	29	0	56	48	52	0
FCIC	2	0	0	2	100	0	0
FDIC	2	30	50	82	2	37	61
FEC	37	54	1	92	40	59	1
FERC	38	16	0	54	70	30	0
FFCB	0	0	8	8	0	0	100
FHLBB	2	16	34	52	4	31	65
FHLMC	1	12	0	13	8	92	0
FLRA	2	25	0	27	7	93	0
FMC	8	7	40	55	15	13	73
FMSHRC	36	0	0	36	100	0	0
FRS	25	99	0	124	20	80	0
FTC	9	45	7	61	15	74	11
FCSC	41	0	0	41	100	0	0
HSTSF	1	0	1	2	50	0	50
IAF	4	0	0	4	100	0	0
ICC	1	0	0	1	100	0	0
LSC	6	0	4	10	60	0	40
MB	17	3	0	20	85	15	0
MRC	8	0	0	8	100	0	0
MSI	2	0	2	4	50	0	50
MSPB	0	1	0	1	0	100	0
NCH	14	0	1	15	93	0	7
NCLIS	5	0	1	6	83	0	17
NCSFA	1	0	0	1	100	0	0
NCUA	23	31	0	54	43	57	0
NhRC	3	0	1	4	75	0	25
NLRB	0	25	0	25	0	100	0

*Data not available.

TABLE A4. Sunshine Meetings Held in 1981—Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
NMB	12	0	0	12	100	0	0
NSB	0	0	10	10	0	0	100
NTSB	28	4	10	42	67	10	24
NRC	110	44	44	198	56	22	22
NRPC	0	0	11	11	0	0	100
OPIC	0	1	5	6	0	17	83
OSHRC	1	34	0	35	3	97	0
PNEPCPC	14	0	1	15	93	0	7
PRC	0	46	2	48	0	96	4
RRB	1	0	8	9	11	0	89
SEC	45	93	2	140	32	66	1
TVA	22	0	0	22	100	0	0
USITO	35	1	9	45	78	2	20
USPC	5	33	0	38	13	87	0
USPS	1	3	12	16	6	19	75
USRA	0	0	11	11	0	0	100
USSFC	1	0	2	3	33	0	67
USUHS	3	0	1	4	75	0	25
Total	726	817	352	1895	38	43	19

TABLE A5. Sunshine Meetings Held in 1982

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
ADF	*	*	*		*	*	*
BIB	0	2	0	2	0	100	0
CAB	1	6	18	25	4	24	72
CCR	10	0	2	12	83	0	17
CCC	1	1	4	6	17	17	67
CFTC	26	77	0	103	25	75	0
CEQ	1	0	0	1	100	0	0
CPSC	29	12	23	64	45	19	36
CRT	80	0	0	80	100	0	0
DIDC	5	0	0	5	100	0	0
EEOC	5	1	29	35	14	3	83
EIB	0	40	0	40	0	100	0
FCC	39	36	0	75	52	48	0
FCIC	3	0	0	3	100	0	0
FDIC	2	58	50	110	2	53	45
FEC	41	49	0	90	46	54	0
FERC	21	10	0	31	68	32	0
FFCB	0	0	8	8	0	0	100
FHLBB	9	23	19	51	18	45	37
FHLMC	0	13	1	14	0	93	7
FLRA	0	10	0	10	0	100	0
FMC	12	4	35	51	24	8	69
FMSHRC	32	10	0	42	76	24	0
FRS	31	110	0	141	22	78	0
FTC	9	26	6	41	22	63	15
FCSC	10	0	0	10	100	0	0
HSTSF	1	0	1	2	50	0	50
IAF	4	0	0	4	100	0	0
ICC	3	3	0	6	50	50	0
LSC	17	0	10	27	63	0	37
MB	11	1	3	15	73	7	20
MRC	11	0	0	11	100	0	0
MSI	3	0	0	3	100	0	0
MSPB	0	0	0	0	0	0	0
NCH	6	0	0	6	100	0	0
NCLIS	5	2	0	7	71	29	0
NCSFA	9	0	0	9	100	0	0
NCUA	12	15	0	27	44	56	0
NhRC	4	0	0	4	100	0	0
NLRB	1	19	1	21	5	90	5
NMB	8	0	0	8	100	0	0

*Data not available.

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TABLE A5. Sunshine Meetings Held in 1982--Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
NSB	0	0	9	9	0	0	100
NTSB	14	1	13	28	50	4	46
NRC	115	63	27	205	56	31	13
NRPC	0	0	2	2	0	0	100
OPIC	0	0	5	5	0	0	100
OSHRC	0	26	2	28	0	93	7
PNEPCPC	20	0	1	21	95	0	5
PRC	3	16	0	19	16	84	0
RRB	4	0	5	9	44	0	56
SEC	43	82	3	128	34	64	2
TVA	22	0	0	22	100	0	0
USITO	44	0	11	55	80	0	20
USPC	5	29	0	34	15	85	0
USPS	1	1	12	14	7	7	86
USRA	0	0	7	7	0	0	100
USSFC	4	0	2	6	67	0	33
USUHS	1	0	1	2	50	0	50
Total	738	746	310	1794	41	42	17

TABLE A6. Sunshine Meetings Held in 1983

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
ADF	2	1	0	3	67	33	0
BIB	0	1	0	1	0	100	0
CAB	0	4	22	26	0	15	85
CCR	9	0	2	11	82	0	18
CCC	5	0	1	6	83	0	17
CFTC	29	60	0	89	33	67	0
CEQ	2	0	0	2	100	0	0
CPSC	41	15	18	74	55	20	24
CRT	*	0	0	0	*	0	0
EEOC	2	0	36	38	5	0	95
EIB	0	71	0	71	0	100	0
FCC	27	23	0	50	54	46	0
FDIC	1	70	40	111	1	63	36
FEC	38	48	0	86	44	56	0
FERC	21	4	0	25	84	16	0
FFCB	0	0	9	9	0	0	100
FHLBB	9	17	13	39	23	44	33
FHLMC	0	5	2	7	0	71	29
FLRA	0	14	0	14	0	100	0
FMC	12	9	29	50	24	18	58
FMSHRC	39	10	1	50	78	20	2
FRS	32	107	0	139	23	77	0
FTC	9	30	4	43	21	70	9
FCSC	9	0	0	9	100	0	0
HSTSF	*	*	*	*	*	*	*
IAF	3	0	1	4	75	0	25
ICC	0	0	0	0	0	0	0
LSC	7	0	6	13	54	0	46
MRC	5	0	0	5	100	0	0
MSI	4	0	0	4	100	0	0
MSPB	2	5	0	7	29	71	0
NCH	4	0	0	4	100	0	0
NCLIS	5	0	2	7	71	0	29
NCUA	10	18	0	28	36	64	0
NhRC	4	0	0	4	100	0	0
NLRB	0	21	0	21	0	100	0
NMB	12	0	0	12	100	0	0
NSB	0	1	9	10	0	10	90
NTSB	11	1	17	29	38	3	59
NRC	107	48	31	186	58	26	17
OPIC	0	0	4	4	0	0	100

*Data not available.

TABLE A6. Sunshine Meetings Held in 1983--Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
OSHRC	0	17	1	18	0	94	6
PNEPCPC	20	0	8	28	71	0	29
PRC	2	19	0	21	10	90	0
RRB	3	0	1	4	75	0	25
SEC	44	83	7	134	33	62	5
TVA	20	0	0	20	100	0	0
USITO	48	0	3	51	94	0	6
USPC	4	29	1	34	12	85	3
USPS	0	2	11	13	0	15	85
USUHS	5	0	0	5	100	0	0
Total	607	733	279	1619	37	45	17

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TABLE A7. Sunshine Meetings Held in 1984

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
ADF	5	2	3	10	50	20	30
BIB	0	3	0	3	0	100	0
CAB	1	1	17	19	5	5	89
CCR	8	0	1	9	89	0	11
CCC	3	0	0	3	100	0	0
CFTC	23	67	0	90	26	74	0
CEQ	7	0	0	7	100	0	0
CPSC	44	10	21	75	59	13	28
CRT	18	0	0	18	100	0	0
EEOC	1	0	34	35	3	0	97
EIB	0	70	0	70	0	100	0
FCC	26	19	0	45	58	42	0
FDIC	0	75	40	115	0	65	35
FEC	45	51	0	96	47	53	0
FERC	22	3	0	25	88	12	0
FFCB	*	*	*	*	*	*	*
FHLBB	19	18	0	37	51	49	0
FHLMC	0	5	2	7	0	71	29
FLRA	0	12	0	12	0	100	0
FMC	6	8	22	36	17	22	61
FMSHRC	28	4	7	39	72	10	18
FRS	21	109	0	130	16	84	0
FTC	12	26	6	44	27	59	14
FCSC	9	0	0	9	100	0	0
HSTSF	2	0	0	2	100	0	0
IAF	0	2	2	4	0	50	50
ICC	10	0	0	10	100	0	0
LSC	11	0	10	21	52	0	48
MRC	8	0	0	8	100	0	0
MSI	2	0	2	4	50	0	50
MSPB	0	10	0	10	0	100	0
NCH	7	0	0	7	100	0	0
NCLIS	5	0	1	6	83	0	17
NCUA	10	14	0	24	42	58	0
NhRC	3	0	0	3	100	0	0
NLRB	0	7	1	8	0	88	13
NMB	12	0	0	12	100	0	0
NSB	1	1	8	10	10	10	80
NTSB	25	4	9	38	66	11	24
NRC	112	42	25	179	63	23	14
OPIC	0	0	5	5	0	0	100

*Data not available.

TABLE A7. Sunshine Meetings Held in 1984--Continued

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
OSHRC	0	14	1	15	0	93	7
PNEPCPC	18	0	14	32	56	0	44
PRC	2	31	0	33	6	94	0
RRB	3	0	0	3	100	0	0
SEC	44	70	3	117	38	60	3
TVA	21	0	0	21	100	0	0
USITO	60	0	0	60	100	0	0
USPC	6	29	0	35	17	83	0
USPS	0	0	12	12	0	0	100
USUHS	3	0	1	4	75	0	25
Total	663	707	247	1617	41	44	15

TABLE A8. Sunshine Act Exemptions Used To Close Meetings, 1979-1984

Agency	Sunshine Act Exemptions Under 5 U.S.C. 552b *											
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(9A)	(9B)	(10)
ADF	-	7	-	-	-	-	-	-	-	-	-	-
BIB	18	-	-	-	-	-	-	-	-	-	-	-
CCLGS	-	2	-	2	-	-	-	-	-	1	5	-
CAB	-	-	1	1	-	-	-	-	-	-	144	-
CCR	-	7	-	-	-	7	-	-	-	-	3	1
CCC	-	-	-	-	-	-	-	-	-	19	3	1
CFTC	-	19	293	15	77	70	95	5	62	217	60	118
CPSC	2	19	62	4	1	8	23	-	88	-	-	198
CRT	-	-	-	-	-	-	-	-	-	-	-	1
CEQ	-	-	-	-	-	-	-	-	-	-	-	1
DIDC	-	-	-	-	-	-	-	-	-	-	-	-
EEOC	-	4	60	3	-	1	10	-	69	-	16	190
EIB	-	-	-	470	-	-	-	-	-	-	-	-
FCC	1	34	1	9	1	5	27	-	19	-	-	120
FCIC	-	-	-	-	-	-	-	-	-	-	-	-
FDIC	-	305	-	192	-	434	-	514	-	506	388	168
FEC	-	225	-	-	-	-	225	-	-	-	225	-
FFCB	-	28	-	-	-	9	-	28	-	-	-	-
FERC	-	1	1	1	27	5	50	-	-	-	8	61
FHLBB	-	6	-	35	4	20	11	166	2	160	16	24
FHLMC	-	2	-	-	-	2	-	-	-	49	11	-
FLRA	-	-	-	-	-	-	-	-	-	-	-	155
FMC	9	5	-	36	20	-	8	-	2	-	18	351
FMSHRC	-	-	-	-	-	-	-	-	-	-	-	33
FRS	2	138	-	279	14	94	5	497	-	469	174	113
FTC	-	-	117	80	-	1	201	-	-	-	3	263
FCSC	-	-	-	-	-	-	-	-	-	-	-	-
HSTSF	4	-	-	-	-	-	-	-	-	-	-	-
IAF	1	-	-	-	-	-	-	-	-	-	-	-
ICC	-	2	-	1	-	1	3	-	2	-	-	-
LSC	-	27	2	2	2	27	16	-	12	-	-	23
MSPB	1	-	-	-	-	-	-	-	-	-	-	21
MB	-	3	-	-	-	-	-	-	1	-	14	-
MRC	-	-	-	-	-	-	-	-	-	-	-	-
MSI	-	-	-	-	-	1	-	-	2	-	-	-

See note at end of table.

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TABLE A8. Sunshine Act Exemptions Used To Close Meetings, 1979-1982—Continued

Agency	Sunshine Act Exemptions Under 5 U.S.C. 552b *											
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(9A)	(9B)	(10)
NCLIS	-	14	-	-	-	11	-	-	-	-	-	-
NCSFA	-	-	-	-	-	-	-	-	-	-	-	-
NCH	-	1	-	-	-	-	-	-	-	-	-	-
NCUA	-	68	-	6	2	58	1	109	-	96	54	63
NLRB	-	59	-	-	-	59	-	-	5	-	-	76
NMB	-	-	-	-	-	-	-	-	-	-	-	-
NRPC	-	35	-	-	-	-	-	-	-	-	-	35
NSB	7	-	-	41	-	47	-	-	-	-	9	37
NTSB		-	7	-	-	-	-	-	-	-	12	76
NhRC	-	1	-	-	-	-	-	-	-	-	3	-
NRC	63	83	1	3	83	135	28	-	72	-	1	139
OSHRC	-	3	-	-	5	-	-	-	5	-	-	158
OPIC	23	1	-	23	-	1	-	-	23	-	-	-
PNEPCPC	-	-	1	-	-	-	-	-	-	-	-	16
PRC	-	18	-	-	-	19	-	-	-	-	1	139
RRB	-	11	-	-	-	30	-	-	-	-	-	-
SEC	1	96	140	162	3358	86	3402	124	1794	-	-	3839
TVA	-	-	-	-	-	-	-	-	-	-	-	-
USUHS	-	-	-	-	-	3	-	-	-	-	-	-
USITO	25	14	1	36	-	11	-	-	-	-	-	-
USPC	-	32	153	6	1	185	185	-	-	-	2	185
USPS	-	-	61	-	9	14	-	-	-	-	27	84
USRA	-	18	-	18	-	18	-	-	-	-	-	18
USSEC	-	-	-	-	-	-	-	-	3	-	-	-
All agencies	163	1248	958	1355	3604	1365	4290	1443	2119	1578	1197	6699

* Exemption numbers are explained in Appendix B.

TABLE A9. Meetings Held With Less Than Seven-Day Notice, 1979-1984*

Agency	Meetings with less than seven day notice	Percent of all meetings	Number of years reported
African Development Fund	1	33	1
Commission on Civil Rights	11	27	3
Commodity Credit Corporation	5	100	2
Commodity Futures Trade Commission	49	44	1
Consumer Product Safety Commission	69	24	4
Equal Employment Opportunity Commission	9	17	1
Federal Communications Commission	66	22	4
Federal Deposit Insurance Corporation	312	55	6
Federal Election Commission	10	13	1
Federal Farm Credit Board	1	3	4
Federal Energy Regulatory Commission	59	23	5
Federal Home Loan Bank Board	23	21	3
Federal Home Loan Mortgage Corporation	17	77	5
Federal Labor Relations Authority	57	97	1
Federal Maritime Commission	48	17	5
Federal Reserve System	20	5	4
Federal Trade Commission	113	50	6
Interstate Commerce Commission	7	13	4
Legal Services Corporation	1	1	6
Merit Systems Protection Board	1	10	2
National Committee on Library and Information Services	1	2	4
National Credit Union Administration	28	12	6
National Labor Relations Board	95	79	5
National Science Board	1	10	1
National Transportation Safety Board	38	30	3
Nuclear Regulatory Commission	322	33	5
Occupational Safety & Health Review Commission	5	45	1
Postal Rate Commission	47	51	3
Railroad Retirement Board	6	12	5
Securities and Exchange Commission	95	38	2
Tennessee Valley Authority	9	8	5
United States International Trade Commission	15	7	4
Totals	1,538	33	

* The data above is incomplete because only four of the agencies provide data for all six years under review. The percentage applies only to those years for which the agency furnished information about the number of meetings held with less than a seven day advance notice. Meetings closed under the expedited closing procedure are not included in the data.

APPENDIX B: ABBREVIATIONS OF NAMES OF AGENCIES INCLUDED IN THIS STUDY

ADF	African Development Fund
BIB	Board for International Broadcasting
CAB	Civil Aeronautics Board
CCC	Commodity Credit Corporation
CCLGB	Chrysler Corporation Loan Guarantee Board
CCR	Commission on Civil Rights
CEQ	Council on Environmental Quality
CFTC	Commodity Futures Trading Commission
CPSC	Consumer Product Safety Commission
CRT	Copyright Royalty Tribunal
DIDC	Depository Institutions Deregulation Committee
EEOC	Equal Employment Opportunity Commission
EIB	Export Import Bank
FCC	Federal Communications Commission
FCIC	Federal Crop Insurance Corporation
FDIC	Federal Deposit Insurance Corporation
FEC	Federal Election Commission
FERC	Federal Energy Regulatory Commission
FFCB	Federal Farm Credit Bureau (Farm Credit Administration)
FHLBB	Federal Home Loan Bank Board
FHLMC	Federal Home Loan Mortgage Corporation
FLRA	Federal Labor Relations Authority
FMC	Federal Maritime Commission
FMSHRC	Federal Mine Safety & Health Review Commission
FRS	Federal Reserve System (Board of Governors)
FTC	Federal Trade Commission
FCSC	Foreign Claims Settlement Commission
HSTSF	Harry S Truman Student Scholarship Foundation
IAF	Inter American Foundation
ICC	Interstate Commerce Commission
LSC	Legal Services Corporation
MB	Metric Board
MRC	Mississippi River Commission
MSI	Museum Services Institute
MSPB	Merit Systems Protection Board
NCH	National Council on the Handicapped
NCLIS	National Commission on Libraries & Information Services
NCSFA	National Commission on Student Financial Assistance
NCUA	National Credit Union Administration
NhRC	Neighborhood Reinvestment Corporation
NLRB	National Labor Relations Board published
NMB	National Mediation Board
NRC	Nuclear Regulatory Commission
NRPC	National Railroad Passenger Corporation
NSB	National Science Board
NTSB	National Transportation Safety Board

OPIC	Overseas Private Investment Corporation
OSHRC	Occupational Safety & Health Review Commission
PNEPCPC	Pacific Northwest Electric Power & Conservation Planning Council
PRC	Postal Rate Commission
RRB	Railroad Retirement Board
SEC	Securities & Exchange Commission
TVA	Tennessee Valley Authority
USITO	United States International Trade Commission
USPC	United States Parole Commission
USPS	United States Postal Service
USRA	United States Railway Association
USSFC	United States Synthetic Fuels Corporation
USUHS	Uniformed Services University of the Health Sciences

APPENDIX C: EXCERPTS FROM THE GOVERNMENT IN THE SUNSHINE ACT

Listed below are portions of the "Government in the Sunshine Act" which are referred to in this report. The ten exemptions to the requirement for open meetings are listed numerically as part of subsection 552b(c).

5 U.S.C. 552b(b) "Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation."

552b(c) "Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting . . . where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to" [lists the ten exemptions for closing a meeting].

(1) national security matters that are specifically authorized and properly classified;

(2) "internal personnel rules and practices";

(3) "matters specifically exempted from disclosure by statute";

(4) "trade secrets and commercial or financial information obtained from a person and privileged or confidential";

(5) formal censure or accusation of a crime;

(6) "clearly unwarranted invasion of personal privacy";

(7) law enforcement investigatory records or information which, if revealed, would (a) "interfere with enforcement proceedings," or (b) "deprive a person of a right to a fair trial or an impartial adjudication."

(8) information contained in or related to reports used by agencies "responsible for the regulation or supervision of financial institutions";

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(9) "information the premature disclosure of which would":
(a) "lead to significant financial speculation" or "significantly endanger the stability of any financial institution"; or
(b) "significantly frustrate implementation of a proposed agency action"; and

(10) "issuance of a subpoena"; "participation in a civil action or proceeding"; "or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication" made on the record.

552b(d)(1) "Action under subsection (c) shall be taken only when a majority of the entire membership of the agency . . . votes to take such action . . . .

(3) "Within one day of any vote taken pursuant to paragraph (1) . . . the agency shall make publicly available a written copy of such vote . . . [and] a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) "Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting . . .

552b(e)(1) "In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines . . . that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement . . . at the earliest practicable time.

(3) "Immediately following each public announcement required by this subsection, notice of the time, place,, and subject matter of a meeting, whether the meeting is open or closed . . . shall also be submitted for publication in the Federal Register."

APPENDIX D: LISTS OF AGENCIES AND THEIR USE OF EXPEDITED CLOSING PROCEDURE AND SEVEN DAYS ADVANCE PUBLIC NOTICE

Agencies Eligible to Use Expedited Closing Procedure

Agency	Regulation
Commodity Credit Corporation	7 CFR 1409.5
Commodity Futures Trading Commission	17 CFR 147.4(b)
Equal Employment Opportunity Commission	29 CFR 1612.13
Export Import Bank	12 CFR 407.2(b)
Federal Deposit Insurance Corporation	12 CFR 311.6
Federal Election Commission	11 CFR 3.2(a)(1)
Federal Farm Credit Bureau	12 CFR 604.330
Federal Home Loan Bank Board	12 CFR 505b.5
Federal Home Loan Mortgage Corporation	1 CFR 460.1-5(a)
Federal Reserve System	12 CFR 216b.7
Federal Trade Commission	16 CFR 4.15(c)(2)
Federal Labor Relations Authority	5 CFR 2413.4
Merit Systems Protection Board	5 CFR 1206.9
National Labor Relations Board	29 CFR 102.140(a)
National Mediation Board	29 CFR 1209.06(a)
Nuclear Regulatory Commission	10 CFR 9.104
Occupational Safety & Health Review Commission	29 CFR 2203.3(c)(4)
Postal Rate Commission	39 CFR 3001.43(d)(3)
Railroad Retirement Board	20 CFR 200.5(c)(3)
Securities Exchange Commission	17 CFR 200.405
United States Parole Commission	28 CFR 16.205
United States Postal Service	39 CFR 7.4(d)

Agencies Using Expedited Closing Procedure But Providing No Information About Its Use

Equal Employment Opportunity Commission
Federal Election Commission
Federal Labor Relations Authority
National Labor Relations Board
Nuclear Regulatory Commission
Postal Rate Commission
Securities and Exchange Commission

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Agencies Providing No Information About Seven Day Notice

Chrysler Corporation Loan Guarantee Board *
Civil Aeronautics Board
Council on Environmental Quality
Depository Institutions Deregulatory Commission **
Federal Crop Insurance Corporation **
Federal Mine Safety and Health Review Commission
Metric Board **
National Council on the Handicapped **
Neighborhood Reinvestment Corporation
Pacific Northwest Electric Power and Conservation Planning Council
United States Postal System
United States Railway Association
United States Synthetic Fuels Corporation **

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* Agency did not file report because it felt it was not subject to the Government in the Sunshine Act.

** Annual report not available.

APPENDIX E:

AGENCIES USING NOTATION VOTING

Civil Aeronautics Board
Commodity Futures Trading Commission
Consumer Product Safety Commission
Copyright Royalty Tribunal
Council on Environmental Quality
Equal Employment Opportunity Commission
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Elections Commission
Federal Energy Regulatory Commission
Federal Home Loan Bank Board
Federal Home Loan Mortgage Corporation
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mine Safety and Health Review Commission
Federal Reserve Board
Federal Trade Commission
Interstate Commerce Commission
Legal Services Corporation
Merit Systems Protection Board
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Transportation Safety Board
Neighborhood Reinvestment Corporation
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Overseas Private Investment Corporation
Postal Rate Commission
Railroad Retirement Board
Securities Exchange Commission
Tennessee Valley Authority
United States International Trade Commission
United States Parole Commission
Uniformed Services University of the Health Sciences
United States Postal Service

AGENCIES NOT USING NOTATION VOTING

African Development Foundation
Board for International Broadcasting
Commission on Civil Rights
Commodity Credit Corporation
Export Import Bank
Harry S Truman Scholarship Foundation
Inter American Foundation
Federal Farm Credit Board
Foreign Claims Settlement Commission
Mississippi River Commission
Museum Services Institute
National Council on the Handicapped
National Commission on Libraries and Information Services
National Railroad Passenger Corporation
National Science Board

AGENCIES NOT RESPONDING TO QUESTION

Chrysler Corporation Loan Guarantee Board
Depository Institutions Deregulatory Committee
Federal Crop Insurance Corporation
Metric Board
National Commission on Student Financial Assistance
Pacific Northwest Electric Power and Conservation Planning Council
United States Railway Association
United States Synthetic Fuels Corporation

RG/rla

April 18, 1988

TO : Subcommittee on Federal Spending, Budget, and Accounting

FROM : Rogelio Garcia
Analyst in American National Government
Executive Organization and Operations Section
Government Division

SUBJECT : Government in the Sunshine, 1979 - 1986.

Since 1979, with the exception of 1980, there has been a steady drop in the number of meetings held under the provisions of the Government in the Sunshine Act.[1] In 1986, the most recent year for which we have complete data regarding the number of meetings held, there were 643 fewer meetings than in 1979. Table 1 shows the number and type of meetings held between 1979 and 1986.

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[1] The data is taken from the annual reports prepared by the agencies under the provisions of the Government in the Sunshine Act. In order to make adequate comparisons, this study does not include data submitted by agencies that were abolished (e.g. the Civil Aeronautics Administration) or created during the period studied. Several agencies reporting only a handful of meetings each year also were omitted.

Table 1. Number and Types of Meetings Held in 1979-1986

Year	All meetings	Open meetings Number	Closed meetings Number	Partly closed meetings Number
1979	1,998	794	891	313
1980	2,112	895	937	280
1981	1,711	636	800	275
1982	1,634	646	735	253
1983	1,505	552	726	227
1984	1,502	605	698	199
1985	1,278	566	700	161
1986	1,355	502	724	129
Total	13,244	5,196	6,211	1,837

Proportionally, the decrease in the number of open meetings and partly closed meetings was greater than the decrease in overall meetings. As a result, a larger proportion of meetings were closed in 1986 than in 1979. In 1970 45 percent of meetings were closed completely; in 1986 53 percent were closed completely. These figures are reflected in Table 2 below.

Table 2. Percent of Types of Meetings Held in 1979-1986

Year	Open meetings Number	Closed meetings Number	Partly closed meetings Number
1979	40	45	16
1980	42	44	13
1981	37	47	16
1982	40	45	15
1983	37	48	15
1984	40	46	13
1985	41	49	10
1986	37	53	10

Seen from another prospective, the percentage drop in the types of meetings held in 1986 compared to 1979 amounted to 59 percent for partly closed meetings, 37 percent for completely open meetings and 19 percent for completely closed meetings. These figures indicate clearly that of the meetings held a greater proportion consists of closed meetings than ever before.

Table 3. Percent Decrease in Types of Meetings Held Between 1979 and 1986

All meetings	Open meetings	Closed meetings	Partly closed meetings
32	37	19	59

The data provided by the Annual Reports raise several questions. First, Why has there been a drop in the number of meetings held? Are notation votes or other types of deliberations dealing with issues that formerly were discussed in meetings held under the Sunshine Act? Second, Why has the percentage of open and partly opened meetings declined while that of closed meetings has increased?

These questions cannot be answered by the data found in the annual reports. Although most agencies indicated that they use notation voting, there is no indication of how often that type of voting is used. Several agencies have reported that notation voting occurs on a wide variety of matters.

At least one study, however, reports that notation voting has increased over the years, but it did not provide any data to support its view, which was based primarily on impressionistic evidence. (Welborn et al, Study on Government in the Sunshine.)

Among the favorable impacts of the Government in the Sunshine Act may be included:

First, the fact that agency members are better prepared to discuss and vote on the issues before them;

Second, that interested observers are better able to understand what is happening regarding issues of interest to them; and

Third, that agency decisions are more likely to be accepted by the the parties affected by those decisions.

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APPENDIX

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TABLE A1. Agencies Decreasing Sunshine Meetings Held, 1979 - 1986

Agency	1979			1986			Percent of decrease			Percent of overall decrease
	O	C	P/C	O	C	P/C	O	C	P/C	
CCR	14	0	4	11	0	1	14	0	75	33
CCC	3	0	2	3	0	0	0	0	100	40
CFTC	29	131	0	26	87	0	10	34	0	29
CEQ	15	1	0	4	0	0	73	100	0	75
CPSC	54	12	24	34	10	6	27	17	75	45
EEOC	10	0	44	2	14	19	80	0	57	35
EXIMBANK	0	115	0	0	80	0	0	30	0	30
FCC	46	31	0	16	1	0	65	97	0	78
FERC	50	25	0	22	1	0	56	96	0	69
FHLBB	39	11	0	6	36	0	85	0	0	16
FHLMC	0	6	4	0	3	0	0	50	400	70
FLRA	2	57	0	2	8	0	0	86	0	83
FMC	18	17	38	5	11	8	72	35	79	67
FMSHRC	40	6	6	13	10	9	67	0	0	38
FRS	41	86	9	16	97	0	61		900	17
FTC	15	51	8	2	41	4	87	20	50	36
FCSC	42	0	0	7	0	0	83	0	0	83
ICC	19	3	1	12	0	0	27	300	100	48
LSC	14	3	4	14	1	4	0	77	0	10
MSPB	5	4	0	1	4	0	80	0	0	44
NLRB	1	36	0	2	20	2	0	44	0	35
NMB	13	0	0	12	0	0	8	0	0	8
NTSB	29	3	12	9	0	16	69	300	0	43
NRC	119	57	36	86	30	18	28	47	50	37
OSHRC	8	34	0	8	23	0	0	32	0	26
PRC	2	15	5	4	7	0	0	53	500	50
SEC	67	98	0	39	70	4	42	29	0	32
TVA	29	0	0	18	0	0	38	0	0	38
USPC	5	27	0	4	4	0	20	85	0	75
Total										

Legend

O represents meetings that were completely open.
C represents meetings that were completely closed.
PC represents meetings that were partially closed.

TABLE A2. Agencies Increasing Number of Sunshine Meetings Held, 1979-1986

Agency	1979			1986			Percent of increase			Percent of overall increase
	O	C	P/C	O	C	P/C	O	C	P/C	
CRT	4	0	0	24	5	0	500	500	0	625
FDIC	4	22	45	0	94	25	0	327	0	68
FEC	16	28	35	38	47	0	137	68	0	8
NCUA	15	12	0	11	18	0	0	50	0	7
USITC	20	0	25	46	0	1	130	0	0	4
USPS	6	0	5	5	1	7	0	100	40	18

Legend

O represents meetings that were completely open.
O represents meetings that were completely closed.
PC represents meetings that were partially closed.

TABLE A3. Agencies Holding Same Number of Sunshine Meetings in 1979 and 1986

Agency	1979			1986			Percent of increase			Percent of overall increase
	O	C	P/C	O	C	P/C	O	C	P/C	
OPIC	0	0	6	0	1	5	0	100	17	

Legend

O represents meetings that were completely open.
C represents meetings that were completely closed.
PC represents meetings that were partially closed.

TABLE A4. Sunshine Act Meetings Held In 1979 and 1986

Agency	1979			1986			Percent change*			Overall* percent change
	O	C	P/C	O	C	P/C	O	C	P/C	
CCR	14	0	4	11	0	1	14	0	75	33
CCC	3	0	2	3	0	0	0	0	100	40
CFTC	29	131	0	26	87	0	10	34	0	29
CEQ	15	1	0	4	0	0	73	100	0	75
CPSC	54	12	24	34	10	6	27	17	75	45
CRT	4	0	0	24	5	0	+500	+500	0	+625
EEOC	10	0	44	2	14	19	80	+1400	57	35
EXIMBANK	0	115	0	0	80	0	0	30	0	30
FCC	46	31	0	16	1	0	65	97	0	78
FDIC	4	22	45	0	94	25	400	+327	44	+68
FEC	16	28	35	38	47	0	+137	+68	1350	+8
FERC	50	25	0	22	1	0	56	96	0	69
FHLBB	39	11	0	6	36	0	85	+227	0	16
FHLMC	0	6	4	0	3	0	0	50	400	70
FLRA	2	57	0	2	8	0	0	86	0	83
FMC	18	17	38	5	11	8	72	35	79	67
FMSHRC	40	6	6	13	10	9	67	+67	+50	38
FRS	41	86	9	16	97	0	61	+13	900	17
FTC	15	51	8	2	41	4	87	20	50	36
FCSC	42	0	0	7	0	0	83	0	0	83
ICC	19	3	1	12	0	0	37	300	100	48
LSC	14	3	4	14	1	4	0	77	0	10
MSPB	5	4	0	1	4	0	80	0	0	44
NCUA	15	12	0	11	18	0	27	+50	0	7
NLRB	1	36	0	2	20	2	+100	44	+200	35
NMB	13	0	0	12	0	0	8	0	0	8
NTSB	29	3	12	9	0	16	69	300	+33	43
NRC	119	57	36	86	30	18	28	47	50	37
OPIC	0	0	6	0	1	5	0	+100	17	0
OSHRC	8	34	0	8	23	0	0	32	0	26
PRC	2	15	5	4	7	0	+100	53	500	50
SEC	67	98	0	39	70	4	42	29	+400	32
TVA	29	0	0	18	0	0	38	0	0	38
USITC	20	0	25	46	0	1	+130	0	96	+4
USPC	5	27	0	4	4	0	20	85	0	75
USPS	6	0	5	5	1	7	17	+100	40	+18
Total	794	891	313	502	724	129	37	19	59	32

* In most cases the percent change represents a decrease in the number of meetings held; a plus sign before the percent change represents those instances in which there was an increase in the number of meetings held.

Legend: O represents meetings that were completely open.
C represents meetings that were completely closed.
PC represents meetings that were partially closed.

TABLE A5. Sunshine Meetings Held, 1979 - 1986

Agency	1979	1980	1981	1982	1983	1984	1985	1986
CCR	18	11	11	12	11	9	10	12
CCC	5	4	8	6	6	3	5	3
CFTC	160	140	101	103	89	90	94	113
CEQ	16	21	0	1	2	7	2	4
CPSC	90	72	67	64	74	75	54	50
CRT	4	94	54	80	?	18	61	29
EEOC	54	49	28	35	38	35	52	35
EXIMBANK	115	118	56	40	71	70	72	80
FCC	77	84	56	75	50	45	29	17
FDIC	71	80	82	110	111	115	138	119
FEC	79	107	92	90	86	96	85	85
FERC	75	69	54	31	25	25	26	23
FHLBB	50	64	52	51	39	37	42	42
FHLMC	10	11	13	14	7	7	6	3
FLRA	59	51	27	10	14	12	8	10
FMC	73	70	55	51	50	36	26	24
FMSHRC	52	50	36	42	50	39	27	32
FRS	136	154	124	141	139	130	123	113
FTC	74	69	61	41	43	44	49	47
FCSC	42	29	41	10	9	9	8	7
ICC	23	12	1	6	0	10	12	12
LSC	21	14	10	27	13	21	43	19
MSPB	9	12	1	0	7	10	5	5
NCUA	27	75	54	27	28	24	23	29
NLRB	37	29	25	21	21	8	19	24
NMB	13	12	12	8	12	12	12	12
NTSB	44	42	42	28	29	38	19	25
NRC	212	196	198	205	186	179	151	134
OPIC	6	6	6	5	4	5	5	6
OSHRC	42	33	35	28	18	15	14	31
PRC	22	25	48	19	21	33	10	11
SEC	165	158	140	128	134	117	106	113
TVA	29	25	22	22	20	21	18	18
USITC	45	70	45	55	51	60	52	47
USPC	32	41	38	34	34	35	9	8
USPS	11	15	16	14	13	12	12	13
Total	1,998	2,112	1,711	1,634	1,505	1,502	1,427	1,355

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TABLE A6. OPEN SUNSHINE MEETINGS, 1979-1986

Agency	1979	1980	1981	1982	1983	1984	1985	1986
CCR	14	10	10	10	9	8	7	11
CCC	3	1	0	1	5	3	3	3
CFTC	29	25	26	26	29	23	25	26
CEQ	15	21	0	1	2	7	2	4
CPSC	54	32	30	29	41	44	26	34
CRT	4	94	53	80		18	59	24
EEOC	10	4	0	5	2	1	8	2
EXIMBANK	0	0	0	0	0	0	0	0
FCC	46	45	27	39	27	25	22	16
FDIC	4	1	2	2	1	0	1	0
FEC	16	49	37	41	38	45	38	38
FERC	50	48	38	21	21	22	23	22
FHLBB	39	12	2	9	9	19	13	6
FHLMC	0	0	1	0	0	0	0	0
FLRA	2	2	2	0	0	0	0	2
FMC	18	44	8	12	12	6	0	5
FMSHRC	40	50	36	32	39	28	13	13
FRS	41	39	25	31	32	21	22	16
FTC	15	12	9	9	9	12	8	2
FCSC	42	29	41	10	9	9	8	7
ICC	19	12	1	3	0	10	12	12
LSC	14	13	6	17	7	11	26	14
MSPB	5	0	0	0	2	0	0	1
NCUA	15	43	23	12	10	10	9	11
NLRB	1	0	0	1	0	0	1	2
NMB	13	12	12	8	12	12	12	12
NTSB	29	21	28	14	11	25	13	9
NRC	119	141	110	115	107	112	94	86
OPIC	0	0	0	0	0	0	0	0
OSHRC	8	1	1	0	0	0	0	8
PRC	2	2	0	3	2	2	5	4
SEC	67	56	45	43	44	44	40	39
TVA	29	25	22	22	20	21	18	18
USITC	20	46	35	44	48	60	52	46
USPC	5	3	5	5	4	6	4	4
USPS	6	2	1	1	0	0	2	5
Total	794	895	636	646	552	605	566	502

TABLE A7. CLOSED SUNSHINE MEETINGS, 1979-1986

Agency	1979	1980	1981	1982	1983	1984	1985	1986
CCR	0	0	0	0	0	0	0	0
CCC	0	2	4	1	0	0	0	0
CFTC	131	115	75	77	60	67	69	87
CEQ	1	0	0	0	0	0	0	0
CPSC	12	10	16	12	15	10	10	10
CRT	0	0	0	0	0	0	2	5
EEOC	0	2	0	1	0	0	24	14
EXIMBANK	115	118	56	40	71	70	72	80
FCC	31	39	29	36	23	19	7	1
FDIC	22	26	30	58	70	75	89	94
FEC	28	58	54	49	48	51	47	47
FERC	25	21	16	10	4	3	3	1
FHLBB	11	21	16	23	17	18	27	36
FHLMC	6	8	12	13	5	5	6	3
FLRA	57	49	25	10	14	12	8	8
FMC	17	3	7	4	9	8	14	11
FMSHRC	6	0	0	10	10	4	9	10
FRS	86	115	99	110	107	109	101	97
FTC	51	43	45	26	30	26	36	41
FCSC	0	0	0	0	0	0	0	0
ICC	3	0	0	3	0	0	0	0
LSC	3	0	0	0	0	0	7	1
MSPB	4	12	1	0	5	10	5	4
NCUA	12	32	31	15	18	14	14	18
NLRB	36	29	25	19	21	7	17	20
NMB	0	0	0	0	0	0	0	0
NTSB	3	5	4	1	1	4	0	0
NRC	57	33	44	63	48	42	37	30
OPIC	0	0	1	0	0	0	0	1
OSHRC	34	31	34	26	17	14	14	23
PRC	15	20	46	16	19	31	5	7
SEC	98	95	93	82	83	70	62	70
TVA	0	0	0	0	0	0	0	0
USITC	0	11	1	0	0	0	0	0
USPC	27	36	33	29	29	29	5	4
USPS	0	3	3	1	2	0	10	1
Total	891	937	800	735	726	698	700	724

TABLE A8. PARTLY CLOSED MEETINGS, 1979-1986

Agency	1979	1980	1981	1982	1983	1984	1985	1986
CCR	4	1	1	2	2	1	3	1
CCC	2	1	4	4	1	0	2	0
CFTC	0	0	0	0	0	0	0	0
CEQ	0	0	0	0	0	0	0	0
CPSC	24	30	21	23	18	21	18	6
CRT	0	0	1	0	0	0	0	0
EEOC	44	43	28	29	36	34	20	19
EXIMBANK	0	0	0	0	0	0	0	0
FCC	0	0	0	0	0	0	0	0
FDIC	45	53	50	50	40	40	48	25
FEC	35	0	1	0	0	0	0	0
FERC	0	0	0	0	0	0	0	0
FHLBB	0	31	34	19	13	0	2	0
FHLMC	4	3	0	1	2	2	0	0
FLRA	0	0	0	0	0	0	0	0
FMC	38	23	40	35	29	22	12	8
FMSHRC	6	0	0	0	1	7	5	9
FRS	9	0	0	0	0	0	0	0
FTC	8	14	7	6	4	6	5	4
FCSC	0	0	0	0	0	0	0	0
ICC	1	0	0	0	0	0	0	0
LSC	4	1	4	10	6	10	10	4
MSPB	0	0	0	0	0	0	0	0
NCUA	0	0	0	0	0	0	0	0
NLRB	0	0	0	1	0	1	1	2
NMB	0	0	0	0	0	0	0	0
NTSB	12	16	10	13	17	9	6	16
NRC	36	22	44	27	31	25	20	18
OPIC	6	6	5	5	4	5	5	5
OSHRC	0	1	0	2	1	1	0	0
PRC	5	3	2	0	0	0	0	0
SEC	0	7	2	3	7	3	4	4
TVA	0	0	0	0	0	0	0	0
USITC	25	13	9	11	3	0	0	1
USPC	0	2	0	0	1	0	0	0
USPS	5	10	12	12	11	12	0	7
Total	313	280	275	253	227	199	161	129

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TABLE B1. SUNSHINE MEETINGS, 1979-1986

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	79	0	15	94	84	0	16
CCC	19	7	14	40	48	18	35
CFTC	209	681	0	890	23	77	0
CEQ	52	1	0	53	98	2	0
CPSC	290	95	161	546	53	17	29
CRT	332	7	1	340	98	2	0
EEOC	32	41	253	326	10	13	78
EIB	0	622	0	622	0	100	0
FCC	248	185	0	433	57	43	0
FDIC	11	464	351	826	1	56	42
FEC	302	382	36	720	42	53	5
FERC	245	83	0	328	75	25	0
FHLBB	109	169	99	377	29	45	26
FHLMC	1	58	12	71	1	82	17
FLRA	8	183	0	191	4	96	0
FMC	105	73	207	385	27	19	54
FMSHRC	251	49	28	328	77	15	9
FRS	227	824	9	1060	21	78	1
FTC	76	298	54	428	18	70	13
FCSC	155	0	0	155	100	0	0
ICC	69	6	1	76	91	8	1
LSC	108	11	49	168	64	7	29
MSPB	8	41	0	49	16	84	0
NCUA	133	154	0	287	46	54	0
NLRB	5	174	5	184	3	95	3
NMB	93	0	0	93	100	0	0
NTSB	150	18	99	267	56	7	37
NRC	884	354	223	1461	61	24	15
OPIC	0	2	41	43	0	5	95
OSHRC	18	193	5	216	8	89	2
PRC	20	159	10	189	11	84	5
SEC	378	653	30	1061	36	62	3
TVA	175	0	0	175	100	0	0
USITO	351	12	62	425	83	3	15
USPC	36	192	3	231	16	83	1
USPS	17	20	69	106	16	19	65
Total	5,196	6,211	1,837	13,244	39	47	14

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TABLE B2. Sunshine Meetings Held in 1970

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	14	0	4	18	78	0	22
CCC	3	0	2	5	60	0	40
CFTC	29	131	0	160	18	82	0
CEQ	15	1	0	16	94	6	0
CPSC	54	12	24	90	60	13	27
CRT	4	0	0	4	100	0	0
EEOC	10	0	44	54	19	0	81
EIB	0	115	0	115	0	100	0
FCC	46	31	0	77	60	40	0
FDIC	4	22	45	71	6	31	63
FEC	16	28	35	79	20	35	44
FERC	50	25	0	75	67	33	0
FHLBB	39	11	0	50	78	22	0
FHLMC	0	6	4	10	0	60	40
FLRA	2	57	0	59	3	97	0
FMC	18	17	38	73	25	23	52
FMSHRC	40	6	6	52	77	12	12
FRS	41	86	9	136	30	63	7
FTC	15	51	8	74	20	69	11
FCSC	42	0	0	42	100	0	0
ICC	19	3	1	23	83	13	4
LSC	14	3	4	21	67	14	19
MSPB	5	4	0	9	56	44	0
NCUA	15	12	0	27	56	44	0
NLRB	1	36	0	37	3	97	0
NMB	13	0	0	13	100	0	0
NTSB	29	3	12	44	66	7	27
NRC	119	57	36	212	56	27	17
OPIC	0	0	6	6	0	0	100
OSHRC	8	34	0	42	19	81	0
PRC	2	15	5	22	9	68	23
SEC	67	98	0	165	41	59	0
TVA	29	0	0	29	100	0	0
USITC	20	0	25	45	44	0	56
USPC	5	27	0	32	16	84	0
USPS	6	0	5	11	55	0	45
Total	794	891	313	1,998	40	45	16

CRS-15

TABLE B3. Sunshine Meetings Held in 1980

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	10	0	1	11	91	0	9
CCC	1	2	1	4	25	50	25
CFTC	25	115	0	140	18	82	0
CEQ	21	0	0	21	100	0	0
CPSC	32	10	30	72	44	14	42
CRT	94	0	0	94	100	0	0
EEOC	4	2	43	49	8	4	88
EIB	0	118	0	118	0	100	0
FCC	45	39	0	84	54	46	0
FDIC	1	26	53	80	1	33	66
FEC	49	58	0	107	46	54	0
FERC	48	21	0	69	70	30	0
FHLBB	12	21	31	64	19	33	48
FHLMC	0	8	3	11	0	73	27
FLRA	2	49	0	51	4	96	0
FMC	44	3	23	70	63	4	33
FMSHRC	50	0	0	50	100	0	0
FRS	39	115	0	154	25	75	0
FTC	12	43	14	69	17	62	20
FCSC	29	0	0	29	100	0	0
ICC	12	0	0	12	100	0	0
LSC	13	0	1	14	93	0	7
MSPB	0	12	0	12	0	100	0
NCUA	43	32	0	75	57	43	
NLRB	0	29	0	29	0	100	0
NMB	12	0	0	12	100	0	0
NTSB	21	5	16	42	50	12	38
NRC	141	33	22	196	72	17	11
OPIC	0	0	6	6	0	0	100
OSHRC	1	31	1	33	3	94	3
PRC	2	20	3	25	8	80	12
SEC	56	95	7	158	35	60	4
TVA	25	0	0	25	100	0	0
USITC	46	11	13	70	66	16	19
USPC	3	36	2	41	7	88	5
USPS	2	3	10	15	13	20	67
Total	895	937	280	2,112	42	44	13

CRS-16

TABLE B4. unshine Meetings Held in 1981

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	10	0	1	11	91	0	9
CCC	0	4	4	8	0	50	50
CFTC	26	75	0	101	26	74	0
CEQ	0	0	0	0	0	0	0
CPSC	30	16	21	67	45	24	31
CRT	53	0	1	54	98	0	2
EEOC	0	0	28	28	0	0	100
EIB	0	56	0	56	0	100	0
FCC	27	29	0	56	48	52	0
FDIC	2	30	50	82	2	37	61
FEC	37	54	1	92	40	59	1
FERC	38	16	0	54	70	30	0
FHLBB	2	16	34	52	4	31	65
FHLMC	1	12	0	13	8	92	0
FLRA	2	25	0	27	7	93	0
FMC	8	7	40	55	15	13	73
FMSHRC	36	0	0	36	100	0	0
FRS	25	99	0	124	20	80	0
FTC	9	45	7	61	15	74	11
FCSC	41	0	0	41	100	0	0
ICC	1	0	0	1	100	0	0
LSC	6	0	4	10	60	0	40
MSPB	0	1	0	1	0	100	0
NCUA	23	31	0	54	43	57	0
NLRB	0	25	0	25	0	100	0
NMB	12	0	0	12	100	0	0
NTSB	28	4	10	42	67	10	24
NRC	110	44	44	198	56	22	22
OPIC	0	1	5	6	0	17	83
OSHRC	1	34	0	35	3	97	0
PRC	0	46	2	48	0	96	4
SEC	45	93	2	140	32	66	1
TVA	22	0	0	22	100	0	0
USITC	35	1	9	45	78	2	20
USPC	5	33	0	38	13	87	0
USPS	1	3	12	16	6	19	75
Total	636	800	275	1,711	37	47	16

TABLE B5. Sunshine Meetings Held in 1982

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	10	0	2	12	83	0	17
CCC	1	1	4	6	17	17	67
CFTC	26	77	0	103	25	75	0
CEQ	1	0	0	1	100	0	0
CPSC	29	12	23	64	45	19	36
CR[illegible]	80	0	0	80	100	0	0
EEOC	5	1	29	35	14	3	83
EIB	0	40	0	40	0	100	0
FCC	39	36	0	75	52	48	0
FDIC	2	58	50	110	2	53	45
FEC	41	49	0	90	46	54	0
FERC	21	10	0	31	68	32	0
FHLBB	9	23	19	51	18	45	37
FHLMC	0	13	1	14	0	93	7
FLRA	0	10	0	10	0	100	0
FMC	12	4	35	51	24	8	69
FMSHRC	32	10	0	42	76	24	0
FRS	31	110	0	141	22	78	0
FTC	9	26	6	41	22	63	15
FCSC	10	0	0	10	100	0	0
ICC	3	3	0	6	50	50	0
LSC	17	0	10	27	63	0	37
MSPB	0	0	0	0	0	0	0
NCUA	12	15	0	27	44	56	0
NLRB	1	19	1	21	5	90	5
NMB	8	0	0	8	100	0	0
NTSB	14	1	13	28	50	4	46
NRC	115	63	27	205	56	31	13
OPIC	0	0	5	5	0	0	100
OSHRC	0	26	2	28	0	93	7
PRC	3	16	0	19	16	84	0
SEC	43	82	3	128	34	64	2
TVA	22	0	0	22	100	0	0
USITC	44	0	11	55	80	0	20
USPC	5	29	0	34	15	85	0
USPS	1	1	12	14	7	7	86
Total	646	735	253	1,634	40	45	15

CRS-18

TABLE B6. Sunshine Meetings Held in 1983

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	9	0	2	11	82	0	18
CCC	5	0	1	6	83	0	17
CFTC	29	60	0	89	33	67	0
CEQ	2	0	0	2	100	0	0
CPSC	41	15	18	74	55	20	24
CRT	*	0	0	0	*	0	0
EEOC	2	0	36	38	5	0	95
EIB	0	71	0	71	0	100	0
FCC	27	23	0	50	54	46	0
FDIC	1	70	40	111	1	63	36
FEC	38	48	0	86	44	56	0
FERC	21	4	0	25	84	16	0
FHLBB	9	17	13	39	23	44	33
FHLMC	0	5	2	7	0	71	29
FLRA	0	14	0	14	0	100	0
FMC	12	9	29	50	24	18	58
FMSHRC	39	10	1	50	78	20	2
FRS	32	107	0	139	23	77	0
FTC	9	30	4	43	21	70	9
FCSC	9	0	0	9	100	0	0
ICC	0	0	0	0	0	0	0
LSC	7	0	6	13	54	0	46
MSPB	2	5	0	7	29	71	0
NCUA	10	18	0	28	36	64	0
NLRB	0	21	0	21	0	100	0
NMB	12	0	0	12	100	0	0
NTSB	11	1	17	29	38	3	59
NRC	107	48	31	186	58	26	17
OPIC	0	0	4	4	0	0	100
OSHRC	0	17	1	18	0	94	6
PRC	2	19	0	21	10	90	0
SEC	44	83	7	134	33	62	5
TVA	20	0	0	20	100	0	0
USITC	48	0	3	51	94	0	6
USPC	4	29	1	34	12	85	3
USPS	0	2	11	13	0	15	85
Total	552	726	227	1,505	37	48	15

CRS-19

TABLE B7. Sunshine Meetings Held in 1984

Agency	Number of meetings				Percent of meetings		
	Open	Closed	P/Closed	Total	Open	Closed	P/Closed
CCR	8	0	1	9	89	0	11
CCC	3	0	0	3	100	0	0
CFTC	23	67	0	90	26	74	0
CEQ	7	0	0	7	100	0	0
CPSC	44	10	21	75	59	13	28
CRT	18	0	0	18	100	0	0
EEOC	1	0	34	35	3	0	97
EIB	0	70	0	70	0	100	0
FCC	26	19	0	45	58	42	0
FDIC	0	75	40	115	0	65	35
FEC	45	51	0	96	47	53	0
FERC	22	3	0	25	88	12	0
FHLBB	19	18	0	37	51	49	0
FHLMC	0	5	2	7	0	71	29
FLRA	0	12	0	12	0	100	0
FMC	6	8	22	36	17	22	61
FMSHRC	28	4	7	39	72	10	18
FRS	21	109	0	130	16	84	0
FTC	12	26	6	44	27	59	14
FCSC	9	0	0	9	100	0	0
ICC	10	0	0	10	100	0	0
LSC	11	0	10	21	52	0	48
MSPB	0	10	0	10	0	100	0
NCUA	10	14	0	24	42	58	0
NLRB	0	7	1	8	0	88	13
NMB	12	0	0	12	100	0	0
NTSB	25	4	9	38	66	11	24
NRC	112	42	25	179	63	23	14
OPIC	0	0	5	5	0	0	100
OSHRC	0	14	1	15	0	93	7
PRC	2	31	0	33	6	94	0
SEC	44	70	3	117	38	60	3
TVA	21	0	0	21	100	0	0
USITC	60	0	0	60	100	0	0
USPC	6	29	0	35	17	83	0
USPS	0	0	12	12	0	0	100
Total	605	698	199	1,502	40	46	13

CRS-20

Table 88. Sunshine Meetings Held in 1985

Agency	Number of Meetings				Percent of Meetings		
	Open	Closed	P/closed	Total	Open	Closed	P/Closed
CCR	7	0	3	10	70	0	30
CCC	3	0	2	5	60	0	40
CFTC	25	69	0	94	27	73	0
CEQ	2	0	0	2	100	0	0
CPSC	26	10	18	54	48	19	33
CRT	59	2	0	61	97	3	0
EEOC	8	24	20	52	15	46	38
EIB	0	72	0	72	0	100	0
FCC	22	7	0	29	76	24	0
FDIC	1	89	48	138	1	64	35
FEC	38	47	0	85	45	55	0
FERC	23	3	0	26	88	12	0
FHLBB	13	27	2	42	31	64	5
FHLMC	0	6	0	6	0	100	0
FLRA	0	8	0	8	0	100	0
FMC	0	14	12	26	0	54	46
FMSHRC	13	9	5	27	48	33	19
FRS	22	101	0	123	18	82	0
FTC	8	36	5	49	16	73	10
FCSC	8	0	0	8	100	0	0
ICC	12	0	0	12	100	0	0
LSC	26	7	10	43	60	16	23
MSPB	0	5	0	5	0	100	0
NCUA	9	14	0	23	39	61	0
NLRB	1	17	1	19	5	89	5
NMB	12	0	0	12	100	0	0
NTSB	13	0	6	19	68	0	32
NRC	94	37	20	151	62	25	13
OPIC	0	0	5	5	0	0	100
OSHRC	0	14	0	14	0	100	0
PRC	5	5	0	10	50	50	0
SEC	40	62	4	106	38	58	4
TVA	18	0	0	18	100	0	0
USITC	52	0	0	52	100	0	0
USPC	4	5	0	9	44	56	0
USPS	2	10	0	12	17	83	0
Total	566	700	161	1427	40	49	11

CRS-21

Table 89. Sunshine Meetings Held in 1986

Agency	Number of Meetings				Percent of Meetings		
	Open	Closed	P/closed	Total	Open	Closed	P/Closed
CCR	11	0	1	12	92	0	8
CCC	3	0	0	3	100	0	0
CFTC	26	87	0	113	23	77	0
CEQ	4	0	0	4	100	0	0
CPSC	34	10	6	50	68	20	12
CRT	24	5	0	29	83	17	0
EEOC	2	14	19	35	6	40	54
EIB	0	80	0	80	0	100	0
FCC	16	1	0	17	94	6	0
FDIC	0	94	25	119	0	79	21
FEC	38	47	0	85	45	55	0
FERC	22	1	0	23	96	4	0
FHLBB	6	36	0	42	14	86	0
FHLMC	0	3	0	3	0	100	0
FLRA	2	8	0	10	20	80	0
FMC	5	11	8	24	21	46	33
FMSHRC	13	10	9	32	41	31	28
FRS	16	97	0	113	14	86	0
FTC	2	41	4	47	4	87	9
FCSC	7	0	0	7	100	0	0
ICC	12	0	0	12	100	0	0
LSC	14	1	4	19	74	5	21
MSPB	1	4	0	5	20	80	0
NCUA	11	18	0	29	38	62	0
NLRB	2	20	2	24	8	83	8
NMB	12	0	0	12	100	0	0
NTSB	9	0	0	9	100	0	0
NRC	86	30	18	134	64	22	13
OPIC	0	1	5	6	0	17	83
OSHRC	8	23	0	31	26	74	0
PRC	4	7	0	11	36	64	0
SEC	39	70	4	113	35	62	4
TVA	18	0	0	18	100	0	0
USITC	46	0	1	47	98	0	2
USPC	4	4	0	8	50	50	0
USPS	5	1	7	13	38	8	54
Total	502	724	129	1,355	37	53	10

APPENDIX

Selected Newspaper and Magazine Articles

[From the Deland (Florida) Sun News, Mar. 20, 1987]

Public Still Has Right To Open Government

(Commentary by Senator Lawton Chiles)

March has a special meaning this year. It marks 10 years of federal "government in the sunshine." And, despite all the initial predictions that government would be unable to function, we have survived. And, I think, for the better.

The democratic ideal relies upon public participation. However, it can hardly be achieved if the public is not informed. The Sunshine Act allows the interested public and the press to have a firsthand view of the process. Through this experience people are able to gain a better understanding of the thought process behind government actions and to ensure that their concerns have been considered.

The original purpose of the Act was, and continues to be, simple and basic: People have a perfect right to observe the conduct of public business.

With a few limited exceptions for national defense * * * which would constitute an invasion of privacy, there is no common-sense reason why citizens shouldn't be able to watch how government spends their money and reaches decisions affecting their businesses, their communities and their futures. Citizens cannot hold government officials accountable if they don't know what those officials are doing.

Prior to enactment of the Sunshine Act, the health of the federal government was in doubtful state. Secrecy was the order of the day. There was a prevalent attitude in Washington that government could conduct the people's business more efficiently if the people were not a part of the process. Consequently, most of government's business was done behind closed doors. Public knowledge of government activities, particularly in the executive branch, depended largely upon selected information officially announced by an agency or the willingness of employees to leak information.

This attitude of secrecy contributed to the crisis of confidence that resulted from Watergate. By 1972 almost two-thirds of the American people felt that most public officials acted out of self-interest rather than out of * * *

There have been and there will continue to be attempts by the agencies covered to disregard the Act. It is our responsibility to see that this does not happen. The difficulties that are raised in criticizing the Act, such as a loss of spontaneity or a restraint of frank conversation, really miss the point. Congress, in enacting this legislation or legislation such as the Freedom of Information Act, were not acting to serve the interest of federal agencies but rather the interest of the public.

Secrecy breeds rumors, distrust and suspicion. It insulates those who govern and alienates those who are not governed. Sunshine, however, promotes free flow of information, builds the credibility of those who govern and earns confidence from those governed.

As author of the Sunshine legislation, those were my goals and will continue to be in the face of any efforts to weaken or circumvent the Sunshine Law. I'm proud that we have a policy giving high regard to the public's right to know. We must never give it up. It would be a sad day indeed, if we were to see government meetings once again behind closed doors and the public kept in the dark.

[From The Washington Times]

Sunshine Law Backers Decry Agency Tactics To Avoid Glare

A decade after Congress ordered federal agencies to let "sunshine" into their meetings by opening their doors to the public, some of the bodies are losing their tans.

One commission stopped meeting rather than do business in the public eye. Another has redefined the word "meeting" to avoid inviting the public, and others have vested more power in their staffs, who can meet informally.

"We know that runs are being taken at Sunshine from different directions," said Sen. Lawton Chiles, Florida Democrat, the principal architect of the law. "We don't have an administration that seems to care a lot about Sunshine and is trying to push it."

But critics, many of them members of commissions covered by the law, contend Congress went overboard when it enacted the Sunshine Act in 1976 and restricted discussion by commissions that regulate such matters as consumer safety, trade and banking, nuclear plant licensing and broadcasters.

These critics believe the doors should swing closed again—at least part way—so they can return to the days when their every comment wasn't made in public earshot.

Sunshine backers say commissions have found ways to bar the public, whether by meeting less frequently or by invoking one of the law's several exemptions that allow for closed meetings on such matters as litigation, criminal investigations and trade secrets.

Mr. Chiles asked the Congressional Research Service to survey the 59 agencies covered by the law in preparation for congressional hearings he plans in May. The study found that over five years, the number of meetings by the 59 agencies dropped by 31 percent, from a high of 2,297 in 1980 to a low of 1,596 in 1984.

Forty percent were open to the public, 43 percent closed and 17 percent partly closed.

On agency, the Interstate Commerce Commission, went from 23 meetings in 1979 to only one in 1981 and none in 1983, prompting criticism from Mr. Chiles and other senators in 1984 and 1985 Senate Appropriations Committee hearings.

The Federal Energy Regulatory Commission went from a high of 75 meetings in 1979 to just 25 in 1984; the Federal Trade Commission went from 74 in 1979 to 43 in 1983 and 44 in 1984.

Not all agencies underwent such dramatic changes. Some, like the Federal Election Commission and the Federal Reserve System, either stayed about the same or increased their meetings.

The ICC's practice of "notation voting," in which commissioners voted individually on ballots circulated to their offices rather than meeting face to face, was described as "backroom wheeling-dealing" by Sen. Mark Andrews, North Dakota Republican, at a 1984 committee hearing.

Now the ICC meets regularly, said agency spokesman Al Brown. Most votes are still by notation but involve issues that are more efficiently handled in that fashion, he said.

While the Sunshine policy gets praise from groups like Common Cause for opening the workings of government, some commission members grumble about having to open up discussions on such minutia as the wording of letters to industry or Congress.

"It makes our business much more cumbersome than would otherwise be the case," said Terry Calvani, chairman of the Federal Trade Commission. "Some questions would be better discussed in a closed meeting than an open one because it [an open meeting] stifles a full and frank discussion. There is more give and take at closed meetings."

Even a liberal Democrat and early supporter of the open-meeting law, Rep. Morris Udall of Arizona, now says "it wouldn't hurt" for Congress to consider modifications.

"The answer is moderation," Mr. Udall said. "The idea of the Sunshine Law is a good idea, but I think we may have gotten carried away." He said key congressional compromises sometimes emerge from lawmakers who go "into the cloakroom" or the hallway to hammer out compromise in private.

Mr. Udall said Nuclear Regulatory Commission member Lando Zech Jr. said in February, "We should be able to sit down and discuss some . . . matters informally, predecisional. We don't have that kind of collegiality. We hardly know each other."

The NRC decided last year that it could hold "brainstorming" sessions in private simply by placing them outside the definition of a "meeting."

NRC Commissioner James Asselstine blasted his colleagues, claiming their decision came from "just a personal reluctance to talk about issues in public." He accused fellow commissioners of "a tendency to stretch the limits" on the law's exemptions that allow for private sessions.

[From the Washington Post, Oct. 14, 1983]

SUNSHINE ACT IS CASTING SOME LOPSIDED SHADOWS

(By Felicity Barringer, Washington Post Staff Writer)

The federal government, living up to the dictates of its Sunshine Act, yesterday announced 11 meetings of its boards and commissions. In addition, one meeting was canceled.

Trouble was, one of the meetings had already taken place, and the one that was canceled yesterday was scheduled to happen the day before.

A review of several recent numbers of the Federal Register—the daily publication that serves as the government's legal bulletin board—shows that, while after-the-fact notices are not everyday occurrences, they appear with considerable frequency, sometimes nearly a week after the meeting is history.

Aside from the obvious incongruity of inviting people to events that have already happened, the notices appear to be out of step with the requirements of the Sunshine Act, which orders the government's "collegial bodies"—usually independent regulators, though in some cases groups within Cabinet agencies—to let people know when they intend to do whatever they do.

That notice, under law, is supposed to be given seven days before the scheduled meeting, except in certain specified cases. But of yesterday's 11 notices, five missed that deadline.

Items from this week's Registers:

The Federal Mine Safety and Health Review Commission announced yesterday that it would hold a meeting last Friday. That meeting was a continuation of the previous day's meeting, according to Jean Ellen, speaking for the panel. "The parties we deal with who are interested in what we do, we usually send a notice to," she said. "Anybody else out there that just happens to be interested, as you say, they're just out of luck."

The Federal Election Commission announced yesterday that its meeting last Wednesday was canceled. "It was a closed meeting, and there was nothing on the agenda," explained Sharon Snyder, who added that she had notified news services of the cancellation the day before when the commissioners voted not to meet because there was nothing to do.

On Tuesday, the Nuclear Regulatory Commission announced a revised plan for its meeting of the previous Thursday, and added a helpful reminder. "Those planning to attend a meeting should reverify the status on the day of the meeting."

Some of the switches are taken with aplomb by all concerned, usually because those who cared knew what was happening and nobody else had any interest in the meeting. But that is not always the case.

This week, a coalition of groups fighting cuts in government-funded legal services persuaded two federal courts to block a Legal Services Corp. meeting whose location had been switched from Washington to Salt Lake City at the last minute.

It takes the Federal Register two business days, in most cases, to publish a meeting notice, according to John Byrne, the register's director. "We have a regularly scheduled turnaround," he said. Notices of meetings are posted in the public room of the register's office at 1100 L St. NW within minutes of their arrival, although on days of frenetic activity minutes may extend to hours, Byrne said.

A LITTLE SHADE, PLEASE—THE GOVERNMENT-IN-THE-SUNSHINE ACT ISN'T WORKING

(By Bevis Longstreth, member of the Securities and Exchange Commission)

Recently I received a questionnaire from the Administrative Conference of the United States, soliciting my views on the effects of the Government in the Sunshine Act. That act requires that meetings of multi-member federal agencies generally be open to the public.

The conference asked "what impact, if any, this legislation has had on the quality and character of decision-making in collegial agencies subject to the Sunshine Act."

In addition to answering the specific questions, I sent the conference the following reply:

The declared policy of the Sunshine Act was "to provide the public with the fullest practicable information regarding the decision-making processes of the Federal Government," while "protecting . . . the ability of the Government to carry out its responsibilities."

Unfortunately, the act failed to achieve the balance recognized in its declaration of policy, and over the seven years since enactment, court interpretations have exacerbated an already difficult situation. In short, the act is counterproductive: it seriously impairs the ability of those relatively few agencies that are subject to its stric-

tures to fulfill their responsibilities, and it fails to provide the public with useful information about the decision-making processes of government.

The Sunshine Act applies only to agencies of the federal government headed by a collegial body composed of two or more members, a majority of whom are appointed by the president with the advice and consent of the Senate. It does not apply to Cabinet departments or single-headed agencies, even though they perform functions closely analogous to those performed by the multi-headed agencies.

For example, the attorney general, whose office is not subject to the act, has law enforcement responsibilities similar to those of such independent regulatory agencies as the Federal Trade Commission and the Securities and Exchange Commission, which are subject to the act. The Office of the Comptroller of the Currency, a single-headed agency not subject to the act, performs regulatory functions virtually identical to those of the Federal Reserve Board, a multi-headed agency covered by the act.

Thus, despite its broad purpose, the act does not apply in an even-handed manner to all agencies of government. Moreover, many of the agencies to which the act applies are those least in need of open government procedures. Consider, for example, the independent regulatory agencies. Their members hold fixed terms and are drawn from both parties. These factors make them the least susceptible to untoward interference.

The act stifles spontaneity, informality and flexibility. It suffocates the free, open and uninhibited exchange of ideas within a collegial body that promotes sound decision-making—the very purpose of providing for a collegial body, rather than a single head, to run the agency.

The act tends to shift power in a multi-headed agency from the collegial body to its chairman. Deliberative meetings involving a quorum of the collegial body cannot be held beyond the public glare unless one of the statutory exemptions applies. This rule applies to meetings with and briefings by staff as well as persons from outside the agency, whether or not regulated by it.

As a result, the chairman typically meets with staff of outsiders alone, formulating policy without the benefit of timely and meaningful comment from other members of the collegial body. Although it would be possible to have multiple meetings, or for the chairman to communicate the results of his meetings to the others by memoranda, efficiency, time limits and practicality usually dictate otherwise.

If the collegial body were to open such meetings to the public, their effectiveness, in terms of the free flow of ideas and exchange of views, would be crippled. As a practical matter, it is rarely done. Thus, members of the collegial body other than the chairman must rely upon information collected by their staff from the chairman's staff and on comments made when the issues have reached the final decision-making stage. In particular, the chairman's meetings with the staff have a powerful tendency to shape the staff's responses and recommendations, which might well be different if it were possible for the other members to be present.

Granted that the act's goals are sound, experience proves that those goals are not being achieved. Open meetings are stilted. Candid debate shrinks from the public gaze, with grandstanding a frequent substitute. The need for open exchange of views and formulation of ideas through trial and error, argument and debate, is met through the devices mentioned, which frustrate the purpose of the act and, as an unfortunate byproduct, tend significantly to shift power from the collegial body to its chairman.

The act's ineffectiveness is well illustrated by one "shortcoming" often mentioned by the media. At open meetings, discussion proceeds on the basis of intra-agency memoranda used by the staff to prepare the members. Frequent reference is made to various points of law or fact contained in these memoranda. The memoranda themselves are not given to the public. Nor are they required to be given. An important exemption under the Freedom of Information Act—exemption 5—protects pre-decisional material that, if disclosed, might have the effect of impairing the decision-making process.

On this point, one can observe a direct conflict in purpose between the FOIA exemption, which preserves the privacy of pre-decisional written materials, and the Sunshine Act, which compels disclosure of pre-decisional oral discussion. This dichotomy distorts the decision-making process because of the restraining effect that the public's presence has on the oral discussion. And, of course, since the public does not have the written materials, it is, at best, difficult and, often, impossible for the public to follow the discussion in a meaningful way.

It is precisely the lack of an analog to this FOIA exemption that creates the problem for collegial agencies under the Sunshine Act. Congress determined to impose the open meeting requirements on some agencies despite the strong public policy supporting government privilege and successfully advanced when FOIA was consid-

ered in 1966. FOIA protects the whole deliberative process. The policy underlying this protection of written material applies with equal force to oral presentations, discussions and debate.

The Sunshine Act should tolerate more darkness. It should be amended to accord "pre-decisional" discussion the same sun screen that the written materials on which that discussion is typically based enjoy under FOIA—and for the same reasons. Such an exemption should not significantly diminish the public's knowledge of the agency's decision-making process. But, even if a significant diminution would result, this modicum of darkness will serve the public interest, for the effectiveness of multi-headed agencies is now being seriously impaired, and the important public purposes of having more than one head are being significantly undermined, by the strictures of the Sunshine Act.

[From the Washington (DC) Post, Aug. 4, 1989]

The Sunshine Act Does Too Work

(By Senator Lawton Chiles)

Recently The Post published a commentary by Bevis Longstreth, a member of the Securities and Exchange Commission, entitled, "A Little Shade, Please" [op-ed. July 25]. In the middle of a Washington summer this sentiment struck a responsive chord—until I went on to read that the relief sought is from the Government in the Sunshine Act. The commissioner maintains that the act impairs the ability of federal agencies to fulfill their responsibilities and does not provide the public with useful information.

As the author of that statute, I am not surprised at this latest attempt to argue that public scrutiny inhibits effective decision-making by government agencies. All through the congressional process leading to enactment of the Government in the Sunshine Act, the agencies to be covered raised similar arguments. "Openness in government is a commendable idea, senator, but surely you can't expect us to function with the public and press looking on. It simply isn't practical." Having come from Florida, where a comprehensive sunshine statute has worked well, I didn't buy the argument then, and after six years experience with the federal statute I don't buy it now.

The purpose of the sunshine law is simple and basic. In passing the legislation (94-0 in the Senate: 384-0 in the House) Congress overwhelmingly stated that the people have a perfect right to observe the conduct of public business. With a few exceptions—national defense information, plans for criminal prosecutions or material that would constitute an invasion of privacy—there is no common-sense reason why citizens shouldn't be able to watch how governemnt spends their money and reaches decisions affecting their businesses, their communities and their future. Citizens cannot hold government officials accountable if they don't know what those officials are doing.

As the Longstreth article indicates, the requirements of the sunshine statute continue to be a bone of contention with some regulatory agency members. In 1981, it was the Nuclear Regulatory Commission that went to court in an effort to avoid opening its budget meetings to the public. The court ruled in favor of openness. While these complaints have and most likely will continue to arise, there is no real evidence that the law inteferes with the normal operations of any agency. At times I am sure it proves inconvenient, but that is a small price when weighed against the public's right to know.

Former chairman of the Federal Trade Commission Michael Pertschuk, in describing the FTC experience under the act, maintained, "Openness in government produces better policymaking and more effectiveness accountability. and we therefore encourage as much public scrutiny of FTC activities as is feasible."

The difficulties that are raised as a basis for criticizing the act, such as a loss of spontaneity or a restraint of frank conversation, really miss the point. Congress, in enacting legislation such as the Freedom of Information Act and the Government in the Sunshine Act, was not acting to serve the interest of federal agencies but rather the interest of the public. If one were to use a standard of what suits the agencies' needs best, I am sure a good argument can be made to minimize public access and involvement.

The sunshine law, passed in the wake of the Watergate scandal, was part of an effort by Congress to remove the cloak of secrecy and reassert the tradition of democracy that government operate in the public. We sought through long hearings and negotiations to ensure that an agency's functioning would not be impaired, and I think we were successful. Frankly, we were not as concerned with the reluctance of an individual commissioner to speak his mind in public.

I think it is worth noting that sunshine represents one area of law in which Congress has not asked more than what it is willing to do itself. By House and Senate rule, committee meetings are open except those discussing national security information or other legitimately confidential information. Of course, there were dire predictions about the effect of these congressional rules on the deliberative process, but they have proven unfounded. It was a little awkward at first for members to speak their minds in the presence of the public and press, but it wasn't long before discussion was as frank as ever.

While my primary objection is with the failure to understand the point of open government, I also want to clarify several specific issues raised by the commissioner.

Longstreth finds fault in the fact that Cabinet agencies or single-headed agencies are not subject to the act. The rationale for covering only multi-headed agencies was grounded in common sense and the nature of collegial agencies. Multi-headed agencies operate on the principle of give-and-take discussion between the members. There is a tradition of public dissent. While the agency takes a final action, it does not necessarily speak with one voice. Its deliberative process can and should be exposed to public scrutiny. The interior workings of a Cabinet secretary's decision-making process, on the other hand, may well be of great interest but are simply not accessible to public observation.

I would take issue as well with the notion that sunshine legislation aims in some way to mitigate what Longstreth calls "untoward interference." I did not push to open government meetings in order to expose corruption or conspiracy. I wanted to open the doors to educate the public or at least make sure the opportunity was available for that educational process.

I happen to think that most members of Congress and most agency members are committed to the public good and do their best to achieve that good. I want the public to be able to see that government does work and is usually working for them. My goal was and is to help redress the crisis in confidence, the crisis of people's lack of trust in their government. Excessive secrecy breeds rumors, suspicion and distrust. It insulates those who govern and alienates those who are affected by government decision-making.

Certainly no law is perfect, and perhaps there are areas in which the Sunshine Act can be improved. However, a critique that argues for a "modicum of darkness" aims at the heart of the law. To those who find open government inhibiting, I would remind them of President Truman's maxim about getting out of the kitchen.

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, August 29, 1983.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, DC.

DEAR SENATOR CHILES: I enjoyed your article in The Washington Post's "Taking Exception" column entitled "The Sunshine Act Does Too Work".

I might candidly admit that in my initial few months of being a Commissioner I thought that the restrictions on more than two Commissioners meeting in private at one time in order to hash-out technical and detailed rulings kept us from getting our work done. It was not a matter of hiding from the public, the rule just seemed an obstacle to meet with a majority to fight our issues between meetings.

However, after a year at the Commission I have found that open meetings indeed are not a hindrance to our effective workings but instead is certainly for the public good. I have enclosed an interview that I took part in one the subject that was published in our recent agency publication, the Monitor, on August 22, 1983.

With kindest personal regards, I am,

Sincerely,

OLIVER G. RICHARD III, *Commissioner.*

AGENCY'S LACK OF MEETINGS DRAWS FIRE—CHILES BLASTS PRACTICES OF INTERSTATE COMMERCE COMMISSION

(By Robert A. Liff)

WASHINGTON—The Interstate Commerce Commission has not held a public meeting since October 1982, prompting U.S. Sen. Lawton Chiles of Florida to charge Wednesday that the agency has violated the Government in-the-Sunshine law.

Instead of meeting, commission chairman Reese Taylor said that he and the other three commissioners had voted by telephone or memo for the last 17 months. The commissioners, paid $68,000 annually, have offices in the same building in Washington.

After Chiles berated Taylor at a Senate subcommittee meeting Wednesday, Taylor said the commission had acted legally but said he would start holding meetings.

"Don't you understand that this government belongs to the public?" Chiles asked at a meeting of the transportation appropriations subcommittee. "I think that a bus company or someone could take you to court, could knock down decisions. I'm not sure your actions are legal."

Chiles is a Democrat and the four commissioners are all Republicans who were appointed by President Reagan. The commission has three vacancies that Reagan is required to fill with Democrats or independents.

The ICC, formed at the turn of the century, makes thousands of decisions each year that primarily affect the trucking and railroad industries, including the rates they charge.

Trucking and railroad deregulation bills that Congress approved in the last year of the Carter administration have forced commissioners to wrestle with controversial decisions over how fast to move ahead with deregulation.

Taylor told senators that voting by telephone and memo did not violate the law since their votes were recorded and available for public inspection.

Commissioner Malcolm Sterett agreed and said the 2,500 votes he has made as a commissioner were mostly "routine."

Chiles disagreed. He said the failure to hold meetings "directly contravenes" the open-government law, which Chiles authored. He said the ICC procedures were "designed to avoid public discussion and decision making by the policy-making commissioners."

Chiles and the subcommittee chairman, Sen. Mark Andrews, R-N.D., agreed to hold a hearing on the commission's failure to hold meetings. Chiles said he would subpoena commissioners if they did not agree to attend.

In an interview after the meeting, Chiles said he will work to reduce the $500,000 allotted to each commissioner annually to cover staff costs.

"They have institutionalized the breach of sunshine," Chiles said. "I think it's an intent to be arrogant. It's a mentality that 'this belongs to us and we're not going to be inconvenienced.' "

ICC spokesman Robert Dahlgren said after the meeting that although Taylor intends to begin holding meetings, the chairman believes "the system was working just fine the way it was."

Dahlgren said the plan to hold public meetings "is something the chairman wanted to do" and Chiles' criticism "gives him more reason to do it."

Taylor is a former law partner of Sen. Paul Laxalt, R-Nev., who is chairman of the Republican National Committee.

[From The Wall Street Journal, Sept. 24, 1985]

NRC, Other Agencies Try to Keep Public in Dark On Some Decisions by Sidestepping Sunshine Law

(By Arlen J. Large)

Washington—Nunzio Palladino is tired of "floorwalking."

That's what it's called at the Nuclear Regulatory Commission when the chairman pads down the hall to see his fellow commissioners one at a time on some issue of the day.

He'd rather just call a meeting of all five commissioners to kick the thing around without any fuss. But the law says the NRC can't have a "meeting" without inviting the whole wide world.

So the NRC has stirred up a considerable fuss by changing the definiton of the kind of meeting that must be public under a 1976 law. The commissioners would like to have some "gatherings" instead, out of public view. The NRC has gained renown as an agency that can't make up its mind—it took almost six years to decide a Three Mile Island case—and its members swear they'll do better if they can just level with each other in private.

WAIT AND SEE

Others are watching. "I imagine every other agency in town is wanting to see if they get away with it," says Donald Simon, a Washington lawyer who has won previous open-meeting lawsuits against the NRC. "If the NRC wins, other agencies will start chipping away at the definition of meeting."

While the nuclear regulators' plight evokes sympathy from Sen. Alan Simpson (R. Wyo.) and some others in Congress, the NRC commissioners also are likely to be dragged into court by strong opponents of the new conception of a bunch of guys

around a table. The familiar result is procedural paralysis at the NRC, which having boldly declared the right to have a gathering, hasn't yet found the nerve to hold one.

It has been nine years since Congress passed the Government in the Sunshine Act, generally requiring multi-headed federal agencies to do their business in public. The law covers nearly 50 agencies which, like the NRC, are run by several people sharing collegial power. Not covered are the big departments headed by a single cabinet officer; Congress reasoned that an audience wouldn't learn much by watching a lone bigwig reach a silent decision.

Even at the sunshine agencies, the really juicy stuff that was always secret still is, under the law's 10 specific loopholes allowing private decision-making affecting such areas as defense, criminal investigations or corporate trade secrets.

One loophole is supposed to thwart "financial speculation." It was broadly written by Congress at the insistence of Arthur Burns, then the stiff-necked chairman of the Federal Reserve Board. Thus the seven-member board's discussions of whether the economy needs a cut in the Fed discount rate are, as always, tightly secret.

But Chairman Burns thought it was a scandal that his mystically powerful agency should be covered by the sunshine law at all, a status struggle he lost. Covered it is, and the seven-member Fed board now dutifully discusses such bank-regulatory minutiae as daylight overdrafts before a small audience of lawyers and reporters.

Interstate Commerce Commission Chairman Reese Taylor last year told shocked senators that his seven-member agency never deliberated in public at all, and he wasn't sure his colleagues would come to a meeting if he called one. "The other commissioners are not all that anxious to go down and discuss all these things in front of everybody," Mr. Taylor said. That drew a forceful reminder about the sunshine law from the Senate Appropriations Committee, and the chastened commissioners now meet in public "all the time," says an ICC spokesman.

ICC'S SHADOWY DODGE

Before it got religion, the ICC often used the shadowy dodge of "notation voting," still popular at many other agencies. Ballots are simply passed from member to member sitting in their individual offices, who thus decide cases without a face-to-face meeting.

But even a phone call between collegial chiefs risks breaking the law when, in a three-member agency, that would produce an unwitnessed quorum. Binah Bear, a lawyer at the three-member Council on Environmental Quality, says she must be careful to include only one member when arranging a conference phone call with outsiders, lest somebody sue. "I don't want to risk that possibility," she says.

At the NRC, the nuclear regulators complain that the sunshine law makes it hard for them even to write a letter to Congress. They want to huddle informaly on the wording instead of sending a draft from office to office. The commission also says it would like to quiz its staff experts privately on technical problems of nuclear plants, and brainstorm "problems likely to face the agency in the coming year." Most voting meetings would remain public.

MOVE PROVOKED TROUBLE

Many people inside and outside the NRC think the agency might have gotten away with the new definition if it had invoked it after a decent warning interval. But, by a 3-to-2 vote, the commission last May said it would start the secret "gatherings" immediately, despite warnings from Chairman Palladino that it would look too brazen and provoke trouble.

He was right. "A gathering is a meeting and it ought to be in the open," says Rep. Dennis Eckart (D., Ohio), who with Rep. Edward Markey (D., Mass.) is pushing a bill in Congress to reverse the NRC. The new definition is "fundamentally subversive" of the sunshine law, says Sen. Lawton Chiles (D., Fla.), the measure's leading sponsor, and Common Cause, a citizens' group that lobbied hardest for sunshine in 1976.

And so the NRC is again impaled on a procedural issue. Though its new rule technically is in effect, "no non-sunshine gatherings have yet been held," Chairman Palladino has assured Congress. The commission promises to decide whether to stick with its new rule or go back, but it hasn't any deadline.

[From the Philadelphia Inquirer, June 10, 1984]

TMI Transcripts Show Disdain for Public's Views

(By Susan FitzGerald and Jim Detjen)

In the months following the March 1979 accident at the Unit 2 reactor at Three Mile Island the Nuclear Regulatory Commission set up an elaborate hearing process to decide whether the undamaged Unit 1 reactor could be safely reopened.

As part of the process, the NRC has sought out the public's views.

But 1,700 pages of secret transcripts released last week of 28 closed-door NRC meetings show that several of the agency's five commissioners dismissed in private the value of that public opinion. The transcript's further show that the commissioners never once discussed the possibility of shutting down Three Mile Island for good.

In transcripts of the closed-door sessions, held over the last 2½ years, the commissioners are seen focusing on how and when—not *whether*—the Unit 1 reactor would be reopened. Moreover, in a number of sessions, several commissioners voiced disdain for the public.

John Ahearne, a former chairman of the NRC, said on Dec. 9, 1982, that the comissioners should ignore a three-county referendum in May 1982 that showed a 2-1 majority against restarting the reactor. "Not only do I think they are not binding on us," Ahearne said, "but I don't think they are relevant."

Nunzio Palladino, the current chairman of the commission, said at a Dec. 9, 1981, closed-door meeting that a proposed public meeting in Harrisburg might not be a good idea. Palladino said: "My frank opinion and my deep-seated feeling is I would not want to have a meeting where you have a lot of people from the public just get up and rant and rave."

An NRC spokesman said Friday that Palladino would not comment on the transcripts.

Three-Mile Island, situated in the middle of the Susquehanna River about 10 miles from Harrisburg, was the site of the nation's worst nuclear accident on March 28, 1979. A series of mechanical and human errors brought the Unit 2 reactor to within 30 to 60 minutes of a meltdown. Since then, the undamaged Unit 1 reactor, which was shut down for refueling at the time of the accident, has remained dormant under an order of the NRC.

In issuing the order, the commission said Unit 1 would not restart until the safety of the plant and the competence of its operators could be assured. Three Mile Island is owned by the General Public Utilities Corp. (GPU).

Transcripts of closed-door commission meetings—from Oct. 1, 1981, to Jan. 26, 1984—were released by the NRC under two Freedom of Information Act requests by the Inquirer. The transcripts, all dealing with Unit 1, show:

Two NRC commissioners—Thomas Roberts and Palladino—said they did not think that charges of cheating by company personnel, allegations of lying by top GPU officials or a Federal criminal indictment of a GPU subsidiary should prevent the restart of the reactor.

At a Dec. 9, 1981 meeting Commissioner Roberts said of alleged lying by top GPU officials: "Suppose they did lie three years ago. What is the relevance of that today?"

Recurring themes in the secret meetings are a stated concern by the commissioners to avoid public "embarrassment" and an expressed need to "sugarcoat" its statements to the public.

At an April 15, 1983, closed-door meeting, Commissioner Victor Gilinsky, asked whether three NRC options on how to approach the restart were listed in order of "potential embarrassment high medium and low." Herzel Plaine, NRC general counsel, replied: "That is right. That is about what it is."

The former NRC general counsel, Leonard Bickwit, advised the commissioners in two closed-door meetings to protect the commission's public "appearance." On Nov. 6, 1981, the commissioners discussed whether to delay a vote on the restart until after the completion of an NRC hearing on cheating on examinations by TMI reactor operators. Bickwit advised in favor of a delay, saying, "I regard it as useful from an appearance standpoint."

Bickwit, who left the government in 1983, is now a lobbyist in Washington for GPU, the utility that owns Three Mile Island.

In the secret meetings, the commission spent virtually no time discussing these issues: whether emergency planning around Three Mile Island is adequate to protect the public; whether the reactor's hardware has been sufficiently upgraded to protect the public, and whether there is a need for the electricity that would be generated by Unit 1.

The NRC has said it may vote by the end of June on whether to allow the restart of Unit 1.

Palladino and Gilinsky debated how to structure a meeting on Oct. 14 focusing on management competence. Gilinsky wanted to question the top management of GPU—William Kuhns, chairman of the board, and Herman Dieckamp, company president. Palladino argued that it was not necessary for the commission to talk to the top management, that the NRC could instead talk to GPU's attorneys.

Palladino said he thought it would serve no purpose for the commission to ask questions dealing with the company's handling of the Unit 2 accident.

"If it started to go into whether or not information was withheld during the accident, I would say I think that is going into an area that is going to not enlighten us on the management capabilities of the organization but rather to rehash something that has been gone over a great deal." Paladino said.

Gilinsky objected.

"How they coped with the past is as important as what they are planning for the future," he said. " . . . I cannot imagine that a banker would not want to talk with the top managers if he were going to give them a big loan."

In the transcripts, Gilinsky repeatedly called for the ouster of Kuhns and Dieckamp.

At a closed-door session on Nov. 8, 1983, Gilinsky chastised the commission for refusing to take a critical look at GPU's top executives. "Everyone is comfortable with fingering small-fries, guys with blue collars, but when you start getting up a little higher, you say, 'Hey, wait a minute,' " Gilinsky said.

The transcripts also raise questions about how independently the commission has been in setting up the conditions under which the plant can be allowed to restart.

At a Jan. 26, 1984, meeting, after some commissioners referred to the restart plan they were considering as the "GPU proposal," Gilinsky commented: "It doesn't look so good to be calling this the GPU proposal. But in fact, it is."

The next day the commission voted 3-2 to approve a plan that would allow the reactor to be restarted prior to the completion of both civil and criminal investigations involving GPU officials. It also would allow Kuhns and Dieckamp to remain in their present positions.

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SHOULD IT BE CURTAINS FOR THE SUNSHINE ACT?—SOME SAY GOVERNMENT HAS BECOME TOO OPEN

(By Rita Beamish, Associated Press)

A decade after Congress ordered federal commissions to let "sunshine" into their meetings by opening their doors to the public, some of the bodies are losing their tans.

One commission stopped meeting rather than do business in the public eye, as mandated in the 1976 Government in the Sunshine Act. Another has redefined the word "meeting" to avoid inviting the public, and others have vested more power in their staffs, which can meet informally.

"We know that runs are being taken at Sunshine from different directions," says Sen. Lawton Chiles (D-Fla.), the principal architect of the law. "We don't have an administration that seems to care a lot about Sunshine and is trying to push it."

Adds Rick Farrell, the senator's administrative assistant: "Most of the agencies are complying with the letter of the law. Some are not complying with the spirit of the law."

But critics, many of them members of commissions covered by the law, argue that Congress went overboard when it enacted the Sunshine Act and restricted private discussion by commission's regulating consumer safety, trade and banking, nuclear plant licensing and broadcasters.

They say the doors should swing closed again—at least part way—so they can return to the days when their every comment was not made in public earshot.

Sunshine backers say commissions have found ways to bar the public, whether by meeting less or by invoking a legal exemption that permits closed meetings on litigation, criminal investigations and trade secrets.

Chiles asked the Congressional Research Service to survey the 59 agencies covered by the sunshine law in preparation for congressional hearings in May. The study found that in five years, the number of meetings dropped by 31 percent, from a high of 2,297 in 1980 to a low of 1,596 in 1984. Forty percent were open to the public, 43 percent were closed and 17 percent were partly closed.

One agency, the Interstate Commerce Commission, went from 23 meetings in 1979 to one in 1981, and none in 1983, prompting criticism from Chiles and other senators in 1984–1985 Senate Appropriations Committee hearings.

The Federal Energy Regulatory Commission went from 75 meetings in 1979 to 25 in 1984; the Federal Trade Commission, from 74 in 1979 to 43 in 1983 and 44 in 1984. Not all agencies saw such dramatic changes; the Federal Election Commission and the Federal Reserve System, for example, either stayed about the same or increased their meetings.

The ICC's practice of "notation voting," in which commissioners voted individually on ballots circulated to their offices rather than meeting face to face, was described as "back room wheeling-dealing" by Sen. Mark Andrews (R–N.D.) at a 1984 committee hearing.

Now the ICC meets regularly, according to agency spokesman Al Brown.

While the Sunshine policy is praised by groups such as Common Cause for opening up government, some commission members grumble about open discussions on such minutiae as the wording of letters to industry or Congress.

"It makes our business much more cumbersome than would otherwise be the case," said FTC Chairman Terry Calvani. "Some questions would be better discussed in a closed meeting than an open one because it stifles a full and frank discussion. . . . I think there is more give-and-take at closed meetings."

Even a liberal Democrat and early supporter of the open-meeting law, Rep. Morris K. Udall of Arizona, now says "it wouldn't hurt" for Congress to consider modifications.

"I think the answer is moderation," Udall said in a telephone interview. "The idea of the sunshine law is a good idea, but I think we may have gotten carried away." He noted that key congressional compromises emerge from lawmakers who go "into the cloakroom" or hallway to hammer out agreements in private.

Udall referred to complaints Nuclear Regulatory Commission members made in February to his Interior and Insular Affairs Committee. NRC Commissioner Lando Zech Jr. is said to have told the panel: "We should be able to sit down and discuss some . . . matters informally, predecisional. . . . We don't have that kind of collegiality. We hardly know each other."

The NRC decided last year that it could hold "brainstorming" sessions in private simply by placing them outside the definition of a "meeting."

NRC Commissioner James Asselstine blasted his colleagues' decision, saying, "I think it's just a personal reluctance to talk about issues in public." He also accused his colleagues of "a tendency to stretch the limits" on the law's exemptions that allow for private sessions.

Michael Pertschuk, a former FTC chairman, calls collegiality "a buzz word. Collegial really means lets get everything settled among us boys," he said. "There was a period before Sunshine when everything was secret at the FTC. There were members almost coming to fist fights. The agency was riddled with controversy. . . . A lot of it wasn't know to the public."

Compliance with the Sunshine Act has also been under scrutiny by the Administrative Conference of Government Agencies and the American Bar Association's section on administrative law. The NRC is waiting for an ABA response before implementing as new "non-meeting" policy.

The ABA committee's preliminary survey shows staff briefings often replace public discussions, said Jay Carlson, chairman of the ABA task force on Sunshine.

"The commissioners can't talk but their staffs can. It has brought a new professional class into this city. The discussion and most of the work is carried on by the staffs," Carlson said.

[From the Washington Post, Dec. 10, 1988]

Deficit Panel Cancels Meeting After Judge Orders Open Forum

(By Eleanor Randolph)

The National Economic Commission, set up by Congress to find ways to reduce the deficit, yesterday canceled its Monday meeting after a federal judge ruled that it must be open to the press and public.

In a temporary restraining order, U.S. District Judge Joyce Hens Green said that the "commission's insistence on shielding the debate as to budget options from public scrutiny directly contravenes the law . . . as it chops the core of our democratic society . . ."

That core was an "open, robust, unvarnished public debate illuminating pressing issues, concerns and policies that affect the lives of all citizens," she wrote. "Fear

flourishes when the process is shrouded in a cloak of secrecy and the swiftest transport to speculation is fear."

The meeting Monday was originally scheduled for the commission to receive economic assumptions and assessments of senior budget officials regarding interest rates, unemployment, inflation and economic growth. The bipartisan group was also scheduled to deliberate on various budget options to cut the deficit.

"The meeting is canceled," commission spokesman Jim Hildreth told reporters after he learned of Judge Green's decision. "Where we go from here, we simply don't know." Hildreth could not say whether the commission would appeal the order.

The commission had argued that its sessions should be exempted from the open meeting provisions of the Sunshine Act under a provision that allows meetings to be closed if they are likely to "significantly frustrate implementation of a proposed agency action."

The lawsuit challenging the closed sessions was brought by the Bureau of National Affairs Inc., a group of financial newsletters, The Washington Post, The Wall Street Journal and Stephen Wildstrom, an editor for Business Week. Public Citizen, a group founded by Ralph Nader, also joined the case and argued for the news organizations.

The commission was set up by Congress last year to report to the president and Congress by March 1989 on ways to decrease the federal budget deficit while promoting economic growth. Its chairmen are former Secretary of Transportation Drew Lewis and Robert Strauss, a prominent Democrat, lawyer and former U.S. trade negotiator. Members include U.S. Sens. Pete Domenic (R-N.M) and Daniel P. Moynihan (D-N.Y.), Chrysler chairman Lee A. Iacocca, AFL-CIO President Lane Kirkland, New York investment banker Felix Rohatyn and former Secretary of Defense Caspar Weinberger.

[From the Congressional Quarterly, Dec. 17, 1988]

Sunshine Too Bright for Deficit Commission?

(By Mike Mills)

Can a blue-ribbon commission, charged with solving problems too politically hot for the legislative process, be expected to do its job without holding secret meetings?

Yes, without exception, was the answer from U.S. District Judge Joyce Hens Green.

Green ruled Dec. 9 that the National Economic Commission (NEC) had to open a closed-door meeting planned for Dec. 12. She is expected to rule before the next NEC meetings, scheduled for Jan. 4 and 5, on whether to permanently bar the panel from closing its sessions.

The NEC, created in late 1987 to propose ways to reduce the nation's budget deficit, instead canceled the Dec. 12 meeting. Members had wanted to discuss whether to use the economic assumptions supplied by the Congressional Budget Office (CBO) or those from the Office of Management and Budget (OMB).

It was the latest in a series of setbacks for the panel, which has been openly divided and has seen its influence decline since George Bush was elected president. Bush and other Republicans have said the panel is just a cover for hiking taxes. *(Weekly Report p. 3248)*

With members that include Sens. Daniel Patrick Moynihan, D-N.Y., and Peter V. Domenici, R-N.M., Rep. William H. Gray III, D-Pa., Chrysler Corp. Chairman Lee A. Iacocca and Democratic Party luminary Robert S. Strauss, the commission panelists are accustomed to striking agreements in the privacy of restaurants, boardrooms or legislative cloakrooms.

The commission on which they agreed to serve, however, is subject to open-meeting rules set down by the Federal Advisory Committee Act (PL 92-463). To get around them, the panel met behind closed doors three times last summer with less than a quorum of the 12 members present. The practice ended, however, because of press complaints.

When the Dec. 12 closed meeting was scheduled, a lawsuit was filed by Ralph Nader's Public Citizen group for *The Washington Post, The Wall Street Journal, Business Week* and the Bureau of National Affairs, which publishes financial newsletters.

NEC attorneys argued that without secret deliberations, panel members could not honestly and openly discuss proposals they were considering.

The Federal Advisory Committee Act and the Government in the Sunshine Act (PL 94-409) allow closed government meetings in only a few cases. One exemption,

9(b), allows closed meetings when "premature disclosures" of deliberations could "significantly frustrate implementation of a proposed agency action."

NEC attorneys argued that this exemption applied to the Dec. 12 budget commission meeting. And since the topics might have been of interest to investors, they further argued that panel members' opinions could affect trading activity on financial markets.

Judge Green rejected the argument. "It is evident in this case that the public has the right to know the issues at discussion as they develop at the Dec. 12 meeting," Green ruled Dec. 9.

She also turned down the notion that Wall Street would react to the meeting's contents. "The expressions to be presented by these officials are not different than the plethora of economic assessments and predictions (some optimistic, some grave) that inundate the public daily."

NEC spokeman James Hildreth said the Dec. 12 meeting was canceled because neither CBO nor OMB was prepared to discuss new data in public.

Hildreth said that, unlike other appointed panels, the budget commission is under intense scrutiny in political and media arenas. Reporters often interpret members' differences as indicators of how they would vote on specific proposals, he said, which inhibits the members from speaking their minds when they gather.

"If they don't let the commissioners meet among themselves, it's hard to imagine them being frank with each other and laying out their positions. This is very political . . . 10 percent [of solving the deficit problem] is math, 90 percent is politics."

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● Mr. CHILES. Mr. President, today, I want to call attention to an issue of great concern to me and to a number of my colleagues on the Appropriation Committee. That is the attitude toward open government at the Legal Services Corporation.

During recent weeks I have heard reports of the Board's unwillingness to fully comply with the spirit of the Government in the sunshine act. I have been told that open meetings of the Legal Service's Board often appear to be little more than stage presentations. There is little debate among Board members over important decisions, leading observers to conclude that most critical issues are actually resolved beforehand, behind closed doors. I have also heard of instances in which meetings have been rescheduled to inconvenient locations with short notice to the public. As the author of the sunshine act, I'm disturbed by these reports. I feel compelled to remind the Corporation's Board, that the act presumes Board decisions will be made in meetings, and that these meetings will be open to the public unless the subject matter falls into one of the act's narrow exemptions and it is determined the public would be better served by keeping the information confidential.

The new bylaw adopted by LSC are a particular area of concern for they contain tools which could be used to frustrate public access to Board meetings. First, they provide that special meetings of the Board may be conducted over the telephone. It is unclear to me how the public will be able to attend a conference call meeting of the Board, or how a transcript can be made of such a meeting in the event it is properly closed under one of the sunshine exemptions. The bylaws should be improved by language making clear that the telephone will only be used as a way to let absent board members participate in a meeting in which a quorum is physically present.

Second, the bylaws say any decision that can be made in a meeting may also be made without a meeting if all the directors agree in writing to the procedure. I understand that many of the simple, routine matters of running a Federal agency can be handled efficiently by notation voting without violating the spirit of open government. But it is obviously inappropriate for substantive decisions to be made outside of the meeting structure.

The Senate Appropriations Committee has just been over this same issue with the Interstate Commerce Commission. This important regulatory body was so opposed to sunshine it simply did not meet from October 1982 until April 1984. Like Congress, multimember agencies are collegial bodies and their decisions should be reached through debate and compromise with the public looking on. To the extent that members of Federal agencies determine agency policy without meeting, they are not properly doing their job.

Finally, I am concerned by the creations of "emergency proceedings" under which the Board may adjourn a meeting if it finds the acts of the public audience to be disruptive, reschedule the meeting at a different location, and invite representatives of the public to attend. The very inclusion of such a provision demonstrates an unfortunate hostility between the Board and the interested public which is antithetical to the principles of open government. The public and the Board must work cooperatively to make open meetings successful. The public should not attempt to disrupt meetings or interfere with the conduct of agency business. By the same token, the Board should not be overly sensitive to efforts by the public to make their views known. I'm extremely concerned this provision will be used to reschedule meetings to a distant location to prevent members of the interested public from attending. Such tactics are clearly violative of the spirit of the law. I remind the Board that open meetings are not invitation only affairs.

Moreover, when meetings are legitimately rescheduled, the public should be given as much notice as possible. If the meetings is held in a location that is many miles from where meetings are ordinarily held, the Board should, ideally, demonstrate its good faith by giving the public more notice than the 7-day minimum required by the act.

In conclusion, Mr. President, I want to send clear notice to the Board of the Legal Service Corporation that Congress is concerned about complaints that the Board is attempting to discourage public access to Board meetings. The Sunshine Act establishes a presumption of openness in the decisionmaking processes of Federal agencies. This is a presumption that Congress takes seriously and I, for one, intend to keep an eye on the Board's sunshine record.

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Senate

GOVERNMENT IN THE SUNSHINE

Mr. CHILES. Mr. President, in 1967, when I was a member of the Florida State Legislature, we passed what is referred to as the "Government in the Sunshine Law." I think it has done as much or more than anything else to improve government in Florida. The law is brief and simple, saying that all meetings of government agencies must be in the open.

An August 4, I introduced a bill, S. 3881, which would establish this same kind of sunshine law on the Federal level. The response to this measure has been encouraging. Seven Senators have joined with me in cosponsoring the measure: Senators PROXMIRE, STAFFORD, HART, TUNNEY, PACKWOOD, GRAVEL, and HARRIS.

John W. Gardner, chairman of Common Cause, sent me a letter giving his strong encouragement and calling S. 3881 "undoubtedly one of the most significant and far-reaching proposals to be placed before the Congress in years."

Mr. President, I ask unanimous consent to have Mr. Gardner's letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMON CAUSE,
Washington, D.C., August 25, 1972.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHILES: Common Cause congratulates you for your introduction of legislation that would open most secret meetings in the Legislative and Executive Branches of the national government. We have strongly supported and advocated this concept since our earliest days and are greatly pleased with the farsighted leadership you have provided on this fundamental issue. As you may be aware, Common Cause was successful in having the 1972 Democratic platform call for the enactment of precisely the kind of legislation you have introduced.

S. 3881 is undoubtedly one of the most significant and farreaching proposals to be placed before the Congress in years. The bill offers a whole new vista to the citizenry. It will increase public knowledge about government and encourage greatly increased citizen participation in their governing institutions. Both the Congress and the Executive Branch, in doing their business more openly, will become far more responsive to the public will. This fundamental change in our governmental processes would go a long way towards arresting the declining confidence of the people in their elected representatives.

We will be happy to provide you every possible assistance in seeking passage of the legislation, including obtaining co-sponsors in the House and Senate, pressing for prompt hearings and working to spotlight the legislation nationally for press and civic attention. We presently enjoy an excellent working relationship with Mr. George Patten of your staff, and will be in touch with him shortly.

You are to be commended for your considerable sensitivity to the concerns of the public and the urgent need to revitalize and reform the government.

Sincerely,

JOHN W. GARDNER.

Mr. CHILES. Mr. President, in Common Cause's Manual for the 1972 congressional elections entitled "Operation Open Up the System," my sunshine bill is referred to in the following way:

For the first time the public has an adequate, comprehensive piece of legislation dealing with the open meetings question. . . . (p. 11-12)

I have also received a letter from Dick Fogel, the chairman of the Sigma Delta Chi freedom of information committee. Sigma Delta Chi is the professional journalistic society. Mr. Fogel has also offered his support for the bill.

I ask unanimous consent to have his letter printer in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SIGMA DELTA CHI,
August 29, 1972.

Senator LAWTON CHILES,
U.S. Senate,
Committee on Government Operations,
Washington, D.C.

DEAR SENATOR CHILES: I was delighted to get your letter describing your efforts to have a federal open meeting law adopted.

You may be sure I am anxious to help in any way I might and hope you will call on me.

My files contain a large amount of reference material on the development and adoption of California statutes on the subject, the primary one being the Brown Act. Included are papers acquired during my years as Chairman of the California Freedom of Information Committee and member of the Advisory Council to the State Information Policy Committee of the California Legislature. I also have a file on my testimony in support of the Ketchum Bill which was designed to apply open meeting provisions to the California Legislature.

If any of this would be of use to you please let me know.

On behalf of our society I commend you for your efforts and wish you success.

Yours sincerely,

DICK FOGEL,
Chairman, Sigma Delta Chi
Freedom of Information Committee.

Mr. CHILES. Mr. President, numerous editorials have been published in newspapers throughout Florida, most of which have given wholehearted support to the idea of extending to the Federal level the sunshine law that Florida enacted several years ago.

I ask unanimous consent to have these editorials printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Miami News]

LAWTON CHILES AND GOVERNMENT-IN-THE-SUN

(By Jaak Kasseewitz)

When the U.S. Senate spent the first week of May in secret debate over classified Vietnam data, freshman Sen. Lawton Chiles, for one, took a dim view of the closed goings-on.

"I do not think the public is going to stand by and allow its business to take place behind closed doors, if, when that business should be open, it is kept closed," said the Florida Senator, who has already shown persuasive talent for a tough job in his first 20 months of service in Washington.

Last week Chiles introduced legislation, patterned after a Florida statute, that would outlaw secret meetings within the congressional and executive branches of government. His only exceptions would be with matters relating to national security and defense, disciplinary proceedings that might adversely affect an individual's reputation and meetings related to a government agency's internal management.

Chiles, concerned with the amount of pub-

lic business transacted behind closed doors in Washington, admittedly faces a tough road. "One senator told me the other day that he had heard about my bill, and he thought that some check ought to be placed on the executive branch," Chiles said in a telephone conversation yesterday. "But when I told him the bill would also apply to both houses of Congress he backed off pretty fast.

"I am in the process of mailing copies of the bill to my colleagues and inviting co-sponsorship. So far, two Democrats and two Republicans have responded favorably and this is most encouraging. Senators Proxmire (D.-Wis.), Hart (D.-Mich.), Packwood (R.-Oreg.) and Stafford (R.-Vt.) have said they will join with me.

"Sen. Abraham Ribicoff (D-Conn.), chairman of the subcommittee on government reorganization, also is interested and he's promised to hold hearings next year. It's too late for 1972. We're recessing for two weeks for the Republican convention and Labor Day, and then hope to adjourn the annual session by Oct. 1.

"My greatest problem will be to get the bill to the Senate floor. That's what happened when we first tried to pass the Sunshine Law in Florida. No one wanted to vote against it but no one was in a hurry to let the bill onto the floor, either."

Senator Chiles takes exception to a report in another newspaper that he opposed the Florida law. "I've always supported it," he said, "although years ago when we first started talking about it I had some reservations. I voted for the provision in the new state Constitution which allows the Senate to meet in secret only to discuss removal of someone from public office. Interestingly enough, the state senate hasn't used that provision since the new Constitution went into effect." (The Florida law has proven highly successful in opening state government doors to public exposure.)

The Senator quickly discovered that secret meetings involve horse-trading on the part of many Congressmen. While 37 per cent of all committee meetings in 1971 were held in executive sessions, 97 per cent, of all meetings dealing with the final form of legislation were secret. Chiles also learned that the art of compromise is a vital part of politics: "When it comes time to 'mark up' a bill, quite often a Senator or Representative isn't anxious to let the public know how he voted on a variety of amendments that involve compromise."

The Congressional Quarterly, which helps newspapermen keep an eye on what is going on in Washington, reflects that committees on which Chiles serves are not completely averse to private meetings. The Agriculture and Forestry committee, for example, met 58 times in 1971 with 19, or 33 per cent, closed. The Government Operations committee met 93 times, only nine of which were in secret, while the Joint Congressional Operations Committee met three of nine times in executive session.

It may be that the Senator's desire to have government in the sunshine already is having its effect. If he can persuade the entire Congress to his position he'll deserve a medal of some

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[From the Tampa Tribune, Aug. 7, 1972]

MAKE PUBLIC A PARTNER

Florida and several other states have profited greatly from Government-in-the-Sunshine laws. It follows that the Federal Government would too.

Florida Senator Lawton Chiles has introduced a bill to abolish secret meetings in Congress and the executive branch of government. His bill would exempt discussion of national security and those matters specified by law as confidential. Internal agency business and personnel disciplinary proceedings so would be excluded.

Senator Chiles' proposal to force public business in Washington into the open faces rough going. Traditionally, officials contend that government will be hampered if the public knows too much.

The opposite is true in Florida's experience with its Sunshine Law. Florida citizens are better informed than ever before at all levels of public business. Elected groups such as School Boards or County Commissions are restrained from making secret decisions before official meetings, then rubberstamping them in public. We know of no one person or administrative act which has been hurt by public disclosure.

Secret dealings with officials and contractors and suppliers have been greatly reduced. Just last week a Circuit Court judge in Charlotte County held a contract with a property reappraisal firm was invalid because negotiations were conducted in private by the County Commission.

There have been half-hearted attempts in Washington to open the doors slightly in Congressional committee rooms and there has been a little declassification of bureaucratic documents on the executive side.

But the public still distrusts Big Government. It is suspicious, and rightly so, of behind-the-scenes activities which leave undisclosed the real reasons for legislation or executive decisions.

By passing Senator Chiles' bill, Congress can heed the public's demands that it become more of a working partner in government.

[From the Palm Beach (Fla.) Post, Aug. 29, 1972]

SUNSHINE FOR WASHINGTON

Most freshmen congressmen who come to Washington take little notice of the committee room doors that swing closed so often when the public's business is being transacted. That's the way their state governments operated and the off-the-floor secrecy only seems natural.

But Sen. Lawton Chiles (D-Fla.) has watched Congress conduct from a refreshingly different viewpoint. He came to the Capitol following three years in the Florida Senate under the state's government-in-the-sunshine law. The contrast made such an impression on Sen. Chiles that he recently introduced a federal version of the progressive Florida law.

"Since I came to the U.S. Senate," he told his colleagues in introducing the bill, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies. I'm not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decisionmaking process."

The floor debates and votes that the public is allowed to witness are rarely as important as the action inside the committee rooms. It is here that the fate of bills is initially decided and most changes in legislation are made. Yet, incredibly, 97 per cent of the Senate committee meetings where critical votes were taken on bills in 1971 were closed to the public and press. More than one-third of all congressional committee meetings were held in secret last year.

Sen. Chiles' government-in-the-sunshine bill would require all government agencies, including Congress and regulatory commissions, to open nearly all of their meetings to public scrutiny. Advance notice and transcripts of these meetings also would be mandated. The only closed-door sessions would be those dealing with national security, routine internal management and personnel disciplinary proceedings. But even these understandable exceptions would have to be closely watched for abuses.

Congress has no one but itself to blame for the tarnished public image brought on by powerful committee members wheeling and dealing in secret. It simply is twisted democracy when senators and representatives do not air their debates and votes on public matters in full view of the public.

Florida's experience with open meetings has been a healthy one and the lawmaking process has not been hindered. That would hold true for Congress.

The credibility loss of the executive branch in recent years has made trust one of the big issues of the 1972 campaign and undoubtedly for many campaigns to come. Unless Congress reforms its secretive ways it is likely that many congressional candidates will find themselves in the same credibility gap. Sen. Chiles' federal sunshine bill offers a means of restoring public confidence and it ought to be adopted as quickly as possible.

[From the Miami Herald, Aug. 6, 1972]

A NATIONAL SUNSHINE LAW COULD REVIVE CREDIBILITY

Nothing in the statutes, we are convinced, has made a greater contribution to good government in modern Florida than the state's pioneering Sunshine Law.

Nothing more could improve the quality and revive the credibility of federal government, we are equally convinced, than a national Sunshine Law as proposed by Lawton Chiles, Florida's walking senator, who helped to pass the Florida statute when he was a state legislator.

Sen. Chiles has introduced a federal version of the Sunshine Law in the 92nd Congress. It would eliminate most secret meetings in the legislative and executive branches of government, particularly those in the close-mouthed regulatory agencies which wield such power over individuals and businesses.

Florida's law, which applies to government even down to the level of the village council, has brought the people's business out into the light with remorseless prosecution of those who have disobeyed it. Secret wheeling and dealing is largely a thing of the past. Sunshine, we suggest, is the quantity which has helped to identify the State Legislature as among the top four in the nation.

Every old ink-stained Washington hand knows that gathering information for public consumption is an ordeal. Arrogance has grown with the federal bureaucracy. On the legislative side, as Sen. Chiles points out, 36 per cent of all congressional committee meetings are closed to the public. It is committee, of course, that Congress really legislates.

It took half a dozen years of pushing and hauling to get the Sunshine Law adopted in Tallahassee. Even its opponents (and Sen. Chiles once was one of them) defend it today as a necessary good rather than a political evil.

The first principle of a free society is the

"consent of the governed." That consent cannot be obtained in star chambers or the dark cabinets of the political connivers. The breath of freedom is in the fresh air.

As distinct from state affairs, there are areas of federal responsibility which require some confidentiality, although not as much as is often exercised not just to protect state secrets but rather to protect bureaucratic ettor.

Even within these limitations a federal anti-secrecy law which opens up the people's right to know about their government could become the most vital of all modern governmental reforms.

We wish Sen. Chiles well. He is already booted. Now for the spurs.

[From the Tallahassee Democrat, Aug. 23, 1972]

MORE SUNSHINE NEEDED ON GOVERNMENT ACTIVITY

U.S. Rep. Dante Fascell of Miami has joined Sen. Lawton Chiles in his effort to bring more "sunshine" into activities of the federal government. Fascell takes the position the American people have a right to know what their government is doing.

There is no question about that, but both Congress and the executive branch have been reluctant in the past to take the public into their confidence. The kind of legislation proposed by Chiles and Fascell is much needed.

The government in the sunshine bill which Fascell has introduced in the House is identical to the one previously filed by Chiles in the Senate. It requires that, except in certain instances, all meetings of any federal agency at which any official action is considered or discussed shall be open to the public.

The exceptions apply to matters affecting national security, internal management of an agency, discussions which might reflect adversely on the character or reputation of an individual, and things which are required by law to be kept confidential.

The bills require that all meetings of congressional committees be open to the public, that public notice of meetings be given and that a transcript of all meetings be made available to the public. Cabinet level departments as well as regulatory agencies and commissions would be required to comply.

Since he came to the Senate last year, Chiles says he has become disturbed by the great amount of public business conducted behind closed doors and by the attitude of secrecy in federal agencies. "I'm not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process," he says.

Chiles recalls that he functioned under the Florida sunshine law for three years, as a member of the State Senate, and as a result, he says he is totally convinced the lawmaking process was not inhibited or damaged.

We agree with him that closed doors are not necessary to the sound resolution of conflicting views. Florida government and citizens have benefitted from the law, and a national law should be of great benefit to the nation.

The stated aim of the federal sunshine act is to regain public confidence and strengthen the democratic process itself by letting the sunlight in.

The essential point, however, is that the American people have a right to know what their government is doing. And as long as the doors stay closed, there isn't much chance of exercising that right.

[From the Jacksonville (Fla.) Times-Union, Aug. 6, 1972]

A "SUNSHINE LAW" FOR THE NATION

For years congressmen have railed against government secrecy, while conducting secret meetings themselves on matters which had no bearing on national security.

They have seroed in on secrecy in the executive branch of government. And the source of the outcry has been predictable.

If the Democrats were in the White House, the cry against secrecy came primarily from Republicans. If the Republicans were in the White House, the outcry has been primarily from Democrats.

Yet during all of this time, Congress has had the power to do something about secrecy—both in the Congress and in the executive branch.

In fact, only the Congress can do something which will stand over a period of years. The executive can promulgate rules for the various executive agencies and bureaus but these can be wiped out by a change in the White House.

It has been, therefore, passing strange in an election year to hear the Democrats at their convention in Miami pledge to do away with unnecessary secrecy in government when they have had overwhelming majorities in both houses of Congress for the past 14 years and have failed to take the actions they now say are needed.

In fact so great was the Democratic majority at one time that a party wheelhorse once jokingly suggested on the Senate floor that a Republican be put in the Smithsonian Institution so future generations could see what one looked like.

Florida Sen. Lawton Chiles has introduced a "government in the sunshine" law for the federal government similar to that passed, several years ago, for state government in Florida.

This development is a commendable and refreshing change from the approach taken by others, which was merely sound without action.

We agree with Chiles that the Legislative Reform Act of 1970—designed to open the closed doors of congressional committees—has failed to do so.

His assessment is backed up by reports that the number of closed or executive sessions is as great as it was before passage of the law.

The practices of federal government secrecy have developed over many, many years and are now so imbedded in the federal bureaucracy and in Congress that it will take a strong measure to change what has become an official way of life.

However, it can be done and it should be done.

And the entire governmental process should be the better for it, despite all the arguments that it will suffer.

If the public is privy to the pro and con discussions which precede government decisions, it is much more likely to accept these decisions as being the right ones.

When they are merely served up without prior public discussion, then they are more likely to be suspect.

There are some major difficulties in fashioning a federal law as opposed to a state law because the federal government, and the federal government alone, is engaged in national security matters, and in delicate negotiations with foreign governments.

However these difficulties are not insurmountable. Sensible exceptions can be made in such a measure, with common sense acting as a guide.

While the senators are about this task, they might include penalties for breaches of secrecy in those cases in which they believe secrecy to be essential to the national interest.

A measure such as that proposed by Chiles is long past due. Congress should give it priority attention.

[From the Stuart (Fla.) News, Sept. 7, 1972]

LAWTON CHILES PRAISED FOR "SUNSHINE" ATTEMPT

We commend U.S. Senator Lawton Chiles for introducing a Federal "Government in the Sunshine Act" to make the Congress do business out in the open, except on matters that might jeopardize national security. The closed-door policy in Congress is contrary to the spirit of our Constitution and the intent of its framers. The public business should be conducted in public.

[From the Daytona Beach Journal, Aug. 23, 1972]

FLORIDA LAWMAKERS SEEK FEDERAL LEVEL "SUNSHINE"

If two Florida members of Congress have their way, the national lawmaking body will have to reform itself as the Florida Legislature did a few years ago.

The House and the Senate would have to conduct their business before the eyes of the public, instead of in the recesses of closed committee rooms.

Earlier this month, Sen. Lawton Chiles introduced a Federal Government in the Sunshine Act. Last week, his move was championed in the House as Rep. Dante Fascell of Miami introduced a companion bill there.

Sen. Chiles is a good candidate for moving toward such a reform. He had three years in the Florida Senate under our Government in the Sunshine law. He said he became "totally convinced the lawmaking process was not inhibited or damaged. Closed doors are not necessary to sound resolution of conflicting views. Florida government and citizens have benefited greatly from the law."

He left that open way of governing to go to Washington and become a part again of government in secrecy as it had been practiced so widely in the Florida Legislature prior to the Sunshine law.

Chiles was appalled when he read a Congressional Quarterly report that showed that in 1971 36 percent of all congressional committee meetings were closed; that 97 percent of the Senate committee meetings specifically designated as business sessions—where the critical action and votes on bills were made—were closed to the public and press.

"Even if no hanky panky is going on, the cloak of secrecy heavily implies its possibility," he said.

But there's more than a possibility. Behind the closed doors of the House Rules Committee this Summer, Chairman William Colmer of Mississippi threatened to hold up other vital legislation if the committee did not issue the antibusing legislation this segregationist wanted passed. This was reported by two prying reporters who managed to get an inside track through members who opposed Colmer's methods.

But letting the public in on what is going on in this manner simply is not good enough. "Leaks" can't always be reliable. They are not a substitute for an on the spot newsman.

Says Chiles: "We must open the doors—and windows—and let the disinfecting sunlight in. We can but gain--better lawmaking, greater public confidence, strengthening of the democratic process itself. This is the aim of my Sunshine Act."

That proposed act would require all meetings of government agencies to be open to

the public with the exception of matters relating to national security and defense, those now required by law to be kept confidential, strictly internal management problems and disciplinary proceedings which could affect adversely an individual's reputation.

Congressional committee meetings also would be opened, with the same exceptions. Violations could take a committee or an agency into court, just as has been done with government bodies in Florida.

Fascell concurs with Chiles' reasoning, and adds: "The American people have the right to know what their government is doing. It is no wonder that many of our citizens have lost confidence and trust in government, since so many of its official proceedings are held in secret."

We wish these exemplary Florida politicians luck. It would provide quite an honor for this state if they succeed in imposing open government rules at the federal level where abuse is rampant.

[From the Sebring (Fla.) News, Aug. 17, 1972]

SUNSHINE

Claiming there is need to open doors and gain better lawmaking, better public confidence and a strengthening of the democratic process itself, Sen. Lawton Chiles has introduced a national-government-in-the-sunshine-bill.

The bill would virtually eliminate secret meetings in the Congress and the executive branch of the federal government. Exceptions would be in matters relating to national security and defense, matters required by other law to be kept confidential, meetings related solely to an agency's internal management, and disciplinary proceedings which could adversely affect an individual's reputation.

Chiles said the legislation was adapted from Florida's government in the sunshine bill, which has been highly successful and beneficial to the public.

We applaud the Senator for his action. It is time the people were told many things which have been hidden from them, either by secret meetings or classified material. Too often, we feel, the meetings served selfish interests with favors for the few, or the secrecy covered goofs or improper actions.

[From the Port Lucie (Fla.) Mirror, Aug 24, 1972]

SUNSHINE IN WASHINGTON

Efforts of Sen. Lawton Chiles to bring some Florida "sunshine" to Washington, D.C., deserve the support of every member of Congress.

Opening government to the public is so important in these times of credibility confusion that the Congress should lead the way.

A few states, led by Florida's now famous "Government in the Sunshine" law, have passed laws opening government to public inspection. The responsibility rightfully lies with Congress to make open government a national effort, required in every state.

Elected officials have found that the "Government in the Sunshine" law is easy to live with, once they got used to it. Some procedures had to be changed, but the officials who have the best interests of their employers, the people, at heart have, in the main, supported the open meetings-records concept.

Chiles has introduced a bill that would require all meetings of government agencies to be held open to the public, with the exception of meetings related to national security and defense, matters specifically required by law to be confidential, agency internal management, and disciplinary proceedings dealing with an individual's reputation.

Also, the law would require agencies to adopt procedures for advance notice of meetings. Congressional committee meetings would be opened, transcripts of meetings would be made available, and gives the right to the public to sue for court enforcement of the law.

Chiles has experience with the "sunshine" demands. He stated, "I functioned under Florida's Sunshine law for three years in the Florida Senate and am totally convinced the lawmaking process was not inhibited or damaged.

"Closed doors are not necessary to sound resolution of conflicting views," he added.

It would be a bright day if the Congress passed Chiles' bill, a very bright day for America.

[From the Brooksville (Fla.) Sun-Journal, Aug. 22, 1972]

SUNSHINE AND MR. CHILES

Florida's leading the way toward opening closed doors in Washington and letting the sun shine in.

We were most pleased that our favorite United States senator, Lawton Chiles of Lakeland, took the cue from his service in the Florida senate and introduced a federal "government in the sunshine" bill which would virtually eliminate secret meetings in congress and the executive branch.

Senator Chiles has long been a champion of open government, holding to the theory that the public's business should be public business.

In Florida he helped enact the model "sunshine" law which has opened countless meetings of city and county commissions, school boards, and hundreds of other public bodies to the people these agencies serve.

Senator Chiles knows the Florida "sunshine" law makes for better government, more responsible and more responsive government. He knows it works—and his splendid aim is to make it work on the national government, where secrecy is a way of life.

A companion bill has been introduced in the House of Representatives by Congressman Dante Fascell (D-Miami). We hope that our district's congressman, Rep. Bill Chappell (D-Ocala) will support it.

But, of even more importance, is the swift support Senator Chiles found for his measure from both Democratic candidates for congressman from our new district.

Both candidates for the nomination, State Sen. Bill Gunter of Orlando and Miller Newton of Pasco county, have endorsed the Chiles measure and promised their support of federal "sunshine," if elected.

Perhaps similar statements will be forthcoming soon from the Republican candidates for the office.

"Since I came to the U.S. senate last year," Mr. Chiles said, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies.

"I'm not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process."

We're proud of Senator Chiles and his efforts. We commend him for standing for right. And we urge him to push with all the vigor at his command to the end that his fine program will be enacted.

[From the Clewiston (Fla.) News, Aug. 24, 1972]

SUNSHINE LAW FOR NATION, TOO

Claiming there is need to open doors and gain better lawmaking, better public confidence and a strengthening of the democratic process itself, Sen. Lawton Chiles has introduced a national-government-in-the-sunshine-bill.

The bill would virtually eliminate secret meetings in the Congress and the executive branch of the federal government. Exceptions would be in matters relating to national security and defense, matters required by other law to be kept confidential, meetings related solely to an agency's internal management, and disciplinary proceedings which could adversely affect an individual's reputation.

Chiles said the legislation was adapted from Florida's government in the sunshine bill, which has been highly successful and beneficial to the public.

We applaud the Senator for his action. It is time the people were told many things which have been hidden from them, either by secret meetings or classified material. Too often, we feel, the meetings served selfish interests with favors for the few, or the secrecy covered goofs or improper actions.

[From the Lakeland (Fla.) Ledger, Aug. 14, 1972]

"SUNSHINE" IN HIGH PLACES

Much of the remainder of this page today is devoted to a statement made by U.S. Sen. Lawton Chiles on the floor of the Senate as he introduced a proposed federal "Government in the Sunshine" law.

Senator Chiles makes an eloquent and convincing argument in favor of the right of a free people to know what their government is doing, and how.

The Senator's bill, patterned after the Florida law, provides for open meetings of all federal governmental agencies and bodies at which official action is considered, discussed or taken, except for actions or discussions relating to national defense and security or where secrecy is required by law.

Quick passage of the Chiles bill is hardly likely, desirable as it is for the public interest.

As the Senator notes in his statement, secrecy has become a byword in government, at all levels, and we cannot foresee wide support for "sunshine" among the officeholders and the bureaucratic agencies of government.

Still, we commend Senator Chiles for introducing the measure and are confident he will push hard for its ultimate adoption.

Actually, if all our elected and appointive officials cared as much for the people they serve as Senator Chiles there would be no need for his bill.

[From the Fort Myers News-Press, Aug 17, 1972]

OPEN THOSE DARK WASHINGTON DOORS

During the past decade roughly four out of every 10 Congressional committee sessions were held behind closed Washington doors.

The example of elected members of the Senate and House conducting "public" business where the public is not allowed is a bad example to set for hired bureaucrats setting their own rules for withholding information. Many citizens are frustrated in dealings with the federal office maze. There is a sense of a lack of communication between many voters and the officials they have empowered through the ballot. Now is a good time to think about opening some of those sealed federal portals.

Sen. Lawton Chiles, D-Fla., is trying to get a little "sunshine" into the federal decision making process. Last week he introduced a campaign to pass a federal open meeting law

based on this state's "government in the sunshine law," requiring public bodies in Florida to openly conduct both their business and the preliminary meetings where thought patterns are developed.

The idea that our Congress needs "sunshine" comes as a surprise to many people who, like the emperor worshippers of the Roman Empire, feel national political office holders have risen above mere mortality to the Olympian heights of divinities.

Whether classified as divine or not, the federal decision making process should be open to the public, at least where sensitive national security matters are not being discussed.

Most states have some type of law allowing public inspection of official documents, just as there is a federal freedom of information law regarding the classification of certain documents. About 40 states require at least some public policy-setting meetings to be open to the public. The state attorney general's rulings on the Florida law apply it to many informal meetings between elected officials where they might discuss public policy and form opinions which would be reflected later in official meetings.

The U.S. House of Representatives permitted newsmen to attend its meetings two days after organizing in 1789. The Senate got around to a similar policy six years later. Congressional publication of its official proceedings came in 1834. Yet during the 1960s approximately 40 per cent of committee sessions, where facts were learned and minds were set, still were not open to the public. Nor are they now.

Chiles said his proposed federal law would require regulatory bodies, such as the Interstate Commerce Commission and Civil Aeronautics Board which control freight and passenger rates, to hold open meetings.

The military and the courts would be exempt, as would disciplinary dealings with an employee's character.

It should be great fun to watch the progress of Chiles' proposal—if it is not killed in some closed door session.

[From the Ocala (Fla.) Star-Banner, Aug. 10, 1972]

A Federal Sunshine Law

Wholehearted support from every member of Florida's congressional delegation should be forthcoming now that Sen. Lawton Chiles has introduced a federal government in the sunshine bill that would virtually eliminate secret meetings in the Congress and the executive branch of the federal government.

Since Florida was among the pioneer states in establishing a law requiring public officials to conduct the public's business in the open, it is only appropriate for this state's lawmakers in Washington to support Chiles' legislation.

As we have noted numerous times in recent years, Florida's government in the sunshine law is one of the finest pieces of legislation ever turned out by the legislature.

It not only has brought government out into the open from behind closed doors and pulled shades, it has forced public officials to be more on the alert and cognizant of the issues before them.

It is true there are instances when the Florida law is being violated or circumvented.

But the fact still remains, the law has eliminated much of the secrecy wheeling and dealing of the past.

Congress sorely needs to do something to improve its image with the citizenry. Its credibility, as well as that of the executive branch, definitely should be upgraded.

By curtailing secrecy, by making decisions in the open, the lawmakers could take a giant step toward eliminating suspicion and distrust.

It is essential for the public to believe in the government and to have faith in those who make the decisions that affect the lives of all of us.

This faith and confidence is hard to come by when 35 per cent of all congressional committee meetings over the course of a year are closed.

The cloak of secrecy pulled over any function heavily implies that something is going on that is not in the best interest of the public. Discussion about national security, of course, is the exception.

Sen. Chiles deserves the applause of citizens all over this land. It is indeed refreshing to see a member of Congress recognize the impropriety of conducting the public's business behind closed doors. It is equally pleasing to see Sen. Chiles introduce his legislation.

The task ahead of him is not going to be easy, by any means.

But then it took a long time, far too long, to get the sunshine bill through the Florida legislature. Hopefully, with the full support of his colleagues from Florida, and with members from both Houses it will not take as long to secure approval of the House and Senate.

[From the Jacksonville Journal, Aug. 9, 1972]

Faint Rays of Sunshine

There seems to be some hope that the long-criticized habit of federal bureaucrats to label official documents needlessly with "top secret," "secret" and "confidential" stamps is being brought under some sort of control.

But, even if those rubber stamps are stopped in midair, we'd still have administrative agencies taking official action behind doors closed to the public and we'd still have congressional committees holding secret sessions.

It is in these latter two areas that Sen. Lawton Chiles of Florida has taken action, and we wish him success as he tries to get a federal "government in the sunshine law" enacted similar to the law that is already on the books in Florida.

The celebrated case of the Pentagon Papers alerted the American public to the vast tonnage of public records that are hidden from public view by being classified as information vital to national security.

In the aftermath of the publication of the Pentagon Papers, various officials estimated that 20 million pieces of overclassified information are lying unseen in government files. A congressional committee was told that probably one-half of one per cent of that information truly related to national security and thus deserved to be stamped "secret."

As a result of such testimony, the Nixon Administration set up the Classification Review Committee last year. And, last week, the committee reported that, in the past two months alone, 27,348 government employes have lost the right to classify documents as top secret, secret or confidential.

But the classification committee can do nothing about closed-door actions by federal administrative agencies or by congressional committees. It is on these problems that Senator Chiles has focused this attention.

"Since I came to the Senate last year," said Chiles, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies."

We hope he gets his law enacted. It should stop such shenanigans as closed-door congressional hearings into the degree to which astronauts have been involved commercially, if at all, during tax financed space missions. We fail to see any justification at all in making such hearings secret.

[From the Pahokee (Fla.) Everglades Observer, Aug. 10, 1972]

We Need More "Sunshine"

U.S. Senator Lawton Chiles has introduced a Federal "Government in the Sunshine" bill which would virtually eliminate secret meetings in the Congress and the executive branch of the federal government.

Exceptions would be in matters relating to national security and defense, matters required by other law to be kept confidential, meetings related solely to an agency's internal management, and disciplinary proceedings which could adversely affect an individual's reputation.

Sen. Chiles said the legislation was adapted from Florida's government-in-the-sunshine bill which was approved in 1967 when he was in the state senate.

"Since I came to the U.S. Senate last year," he said today, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies.

"I'm not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process."

He added, "All of us know the feelings of alienation and frustration many people have toward government these days. As government has grown, it seems to have gotten further away, out of the reach of people "It's not responsive enough; there's too little communication and understanding and trust."

The Senator said he believes this public discontent is in part due to government secrecy, "In most cases, totally unnecessary secrecy." He concluded the need is now to open the doors and gain better lawmaking, greater public confidence and strengthening of the democratic process itself."

We couldn't agree with Senator Chiles more. He is to be commended for coming up with the legislation on a federal level that Florida has adopted state-wide. We need protection from cloak-room politics at every level of government.

[From the Clearwater (Fla.) Sun, Aug. 16, 1972]

A Good Bill

U.S. Sen. Lawton Chiles of Florida is trying to remedy an evil in governmental operations that everybody has talked about for years, but no one does anything about.

He has introduced a federal "Government in the Sunshine" bill which would virtually eliminate secret meetings in the Congress and the executive branch of the federal government.

Only exceptions would be in matters relating to national security and defense, matters required by law to be confidential, meetings related so solely to internal management, and disciplinary proceedings.

Chiles said he adapted the bill after Florida's government-in-the-sunshine law.

It's a good idea; we hope it passes.

[From the Orlando Sentinel, Aug. 11, 1972]

GOVERNMENT SECRECY CRITICIZED

Editor: Re: Aug. 5 story about Sen. Lawton Chiles, he is certainly advocating a law which could prevent the total bankruptcy of our nation.

It seems certain that the vast majority of our nearly tax-defeated citizens in Florida, and throughout the nation, will applaud Sen. Chiles' effort to get passed a "federal government in the sunshine law," which, at least, might prevent some of the backroom financial flim-flamming of America's middle class taxpayers which should have been stopped a century ago.

As Sen. Chiles said in that story, "I am not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process." Also, he mentioned the prime cause of our nation's problems when he said, "Public discontent is due in part to government secrecy which, in most cases, is totally unnecessary."

Too often the wishes of the majority are circumvented on behalf of partisan (or personal) goals. Then such goals are cunningly disguised as public needs and Americans have more unnecessary taxes heaped upon them each year.

BARRY CRIM.

DELAND.

[From the Sanford (Fla.) Herald, Aug. 7, 1972]

LAURELS FOR CHILES AND CRANSTON

Public thanks is due two United States Senators who have introduced bills which can do much to assure continuance of the confidentiality right which a free press must have and to shed light on meetings of Federal authorities and congressional meetings.

Senator Alan Cranston of California is the one whose bill consists of a single sentence: "A person connected with or employed by the news media or press cannot be required by a court, a legislature, or any administrative body to disclose before the Congress or any Federal court or agency any information procured for publication or broadcast."

The vigilance of the California Democrat is noteworthy. For he had detected the basic damage to a free press which could come from a Supreme Court ruling that the press does not inherently possess a confidentiality privilege as part of its first amendment rights. The bill, introduced on June 30, should be passed and with such a majority that the message could not be lost.

Florida's own junior Senator, Lawton Chiles, is the legislator who has just introduced a "Government in the Sunshine Act" with which he "seeks to assure the openness of our governmental processes and to restore public confidence in those processes."

Senator Chiles had gone to Washington after having experienced the benefits which the Florida government in sunshine law has bestowed on the people of our State.

Once there he became "very disturbed by the great amount of public business being conducted behind closed doors and by the attitude of secrecy I've seen in our Federal Government agencies."

A legislator of action, the Lakeland Democrat prepared the act which is now before the Senate and bolstered its presentation with a quotation from the famed Supreme Court Justice, Louis Brandeis, who wrote in 1913:

"Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman."

What appears to be the motivation in both of these instances is the sincere desire of the Senators to do what can be done to stop the continuing loss of public confidence in government.

This is a dangerous situation. To remedy it by responsible journalism is the key treatment. Senator Cranston makes such reporting possible.

To bring government processes—wherever possible—out of the shadows, the Chiles prescription, is to restore confidence. Each is important. Together they are unbeatable!

[From the Naples (Fla.) Daily News, Aug. 8, 1972]

MORE "SUNSHINE" EVERYWHERE

Florida's Senator Lawton Chiles wants to eliminate virtually all of the secret meetings now taking place in the congressional and executive committees of the national government. And he has introduced a federal "government in the sunshine" bill which, if approved by the House and Senate, would go a long way in removing what Chiles describes as the "alienation and frustration many people have toward government."

Chiles thinks government is not responsive to the citizenry it represents, fails to let the public in on the public's business, thus planting the seeds for suspicion and lack of confidence.

"Since I came to the U.S. Senate last year," Chiles says, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies . . . in most cases, totally unnecessary secrecy."

The Florida senator, who helped pass this state's own sunshine law, does not favor delivering the nation's military secrets to the enemy, wants no part of endangering national security. But he obviously fears big-government control of public information more than he fears the occasional leak of security matter.

Any erosion of the Florida sunshine law is being watched very carefully not only by elected officials like Senator Chiles but by the courts themselves which have been loath to make any exception to the requirement for open meetings. The original complaint against the Sunshine law (approved in 1967) was that the open-meeting requirement would only drive state and local officials into secret pre-conference agreements which then would be formally ratified at subsequent public meetings.

But in a major Florida Supreme Court decision (1969) the justices ruled that such circumvention was contrary to the intent of the legislature, and that the open-door ruling applied to all meetings dealing with the public's business. Thus, the "entire decision-making process" of government is subject to the Florida act, not just formal meetings or voting sessions.

The Florida court's ruling in this case went to the heart of the matter: The public is not only entitled to know the final decision of the governmental body but it is entitled also to know the argument pro and con that went into the arrival at the decision.

The sunshine law, as it works in Florida, may sometimes inconvenience governmental bodies but one has only to look to neighboring counties to discover that the law has teeth, that it is being applied by the courts as the legislature intended, and that breaches are not considered trivial matters.

Several other states have gone the "sunshine" route and we believe that many more will follow. Senator Chiles is not alone in sensing that the American public wants to know more, not less, about what makes our government tick, and as time goes by the demand for open doors along all government corridors will be more and more insistent. It seems unnecessary even to plead the case.

[From the Winter Haven (Fla.) News-Chief, Aug. 10, 1972]

LET THE SUNSHINE IN

Our own Senator Lawton Chiles has proposed a "Federal Government in the Sunshine" law just as we have in our state. He feels, and rightly so, that the people of the nation are entitled to know about the operation of their government. He feels that entirely too many decisions are being made behind closed doors and that we would have a much better Federal government if they were made out in the open.

Obviously, the only thing that must be done in secrecy is the handling of our national security, and even there a great deal of it could be done before the public. We know for sure that there would be less doubt as to how the government operates and people would have more respect for the government if they knew from day to day just what is going on. It's a great law and should receive the backing of the people of the nation.

[From the Gainesville (Fla.) Sun, Aug. 13, 1972]

A LITTLE DAB WILL DO

Lawton Chiles, who got to the U.S. Senate by tromping the length of Florida on his feet, is now trying to unlock doors with his tongue.

We refer not to a gymnastic feat, but oratory. And it will take a great deal of oratory to charm the doors of the federal government into opening for public inspection.

That is what Senator Chiles wants to do. He has ntreduced a Government-in-the-Sunshine bill to open federal-level meetings to the public. Amongst the briefcase and satchel toters, this ranks second only to playing spin-the-bottle with an aged hyena.

So that is why Senator Chiles has resorted to oratory, even to quoting former U.S. Justice Louis D. Brandeis: "Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman."

The Chiles Sunshine Law requires Congress and federal agencies (excluding the courts and the military) to conduct meetings in public unless the matter (1) affects the national security, (2) relates to internal management of the committee or agency, (3) reflects adversely on the reputation of an individual, or (4) is already secret under other laws. Just any ordinary citizen can take a closed door compliment to the nearest federal district court—which makes enforcement easy.

Senator Chiles says he got his idea for a federal Sunshine Law from the Florida Sunshine Law enacted in 1967. He freely compares the two favorably.

That is carrying things a bit too far, because the Florida law is brief and tight as a drum with no exceptions to closed meetings—although the Florida Supreme Court has waffled a bit and installed a few semantic shutters.

The Chiles federal-level bill, on the other hand, is loaded with such exceptions as "internal management" and "national security" and matter which "tend to reflect adversely" on any individual. When the Senate Committee on Standards and Conduct probes a Senator caught with his hand in a lobbyist's

pocket, you can bet your kingdom that meeting will be closed because it will "tend to reflect adversely." Some senators will go further and argue the "national security" is endangered.

With a law riddled like that, who needs Swiss cheese?

So the comparison between Florida law and the Chiles bill is not really cricket. But the federal government is so secretive that even Swiss cheese is an improvement.

Last year in the Senate alone, 30 per cent of the committee meetings were behind closed doors. Senator Chiles is a member of the Joint Congressional Operations Committee and the Agriculture Committee—both of which met 33 per cent in secret.

In the U.S. House at the other end of the hall, things are worse—with 41 per cent of the meetings secret. Our Second District Rep. Don Fuqua, for example, is a member of the Science and Astronautics Committee (24 per cent secret) and Government Operations (22 per cent secret).

The Chiles bill will not eliminate a great deal of that secrecy. But we are reminded of a Brylcreem television commercial of a decade ago, which proclaimed "a little dab will do ya."

We will settle for that.

[From the St. Petersburg (Fla.) Independent, Aug. 8, 1972]

CHILES TRYING TO PRY OPEN THE NATIONAL DOOR

What the public doesn't know, it can't condemn or praise.

That has been the working policy of the federal government. It emanates from the Congress, where elected, tax-paid officials hide to perform the public's business.

Small wonder, therefore, that the bureaucracy created by Congress and thus further removed from the public feels unobliged to allow public access to its policymaking meetings.

First term U.S. Sen. Lawto. Chiles of Florida may be a bit brash with h[illegible] proposed federal version of a "gove[illegible]ment-in-the-sunshine" law.

However, a little temerity may be what an encrusted Congress and bureaucracy need to be awakened to the public's displeasure with government in secrecy.

Chiles proposes open meetings for all congressional and bureaucratic sessions, except those dealing with national security and defense, others expressly closed by law, internal management, and disciplinary problems of a federal agency.

His exemptions may be too vague.

But his broadside attempt to open the federal government to public inspection is the first crack of sunlight we've seen in Washington in a long time.

Chiles wisely quotes former Supreme Court Justice Louis D. Brandeis:

"Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman."

An informed electorate is the only sure guarantee of an enlightened democratic society.

But when that electorate's very own business is conducted in secret, the fiber of the republican democracy is shredded.

Particularly appealing about Chiles' proposal is its expression that Congress would open its own doors and then properly assert its control over the bureaucracy by also opening to the public doors to the mass of regulatory agencies that govern our lives—the Interstate Commerce Commission, Federal Trade Commission, Civil Aeronautics Board, Federal Communications Commission and scores of others.

In many ways, Americans are more governed by a series of initials—ICC, FCC, FTC, CAB, and perhaps one day a Department of ETC.—than by the officials they have elected.

True to his campaign pledge, Chiles is seeking to bring government closer to the people.

"Only with such openness can the public judge and express, through its vote or voice, whether governmental decisions are just and fair," he says.

Floridians right now should exact pledges of support for the Chiles measure from every person who seeks election to the Congress.

We would expect members of the current Florida congressional delegation to record their endorsement of federal government in the sunshine.

We see few exceptions to the axiom that the public has a right of free access to the conduct of its own business. Sunshine laws have succeeded in Florida and at least five other states. It's time the principle was applied by our national government.

[From the Boca Raton News, Aug. 6, 1972]

THANK YOU, SENATOR CHILES

If Florida Senator Lawton Chiles has his way, sunglasses may soon become a necessity for our federal officials.

Chiles has introduced a Federal Government in the Sunshine bill, which would virtually eliminate secret meetings in the Congress and the executive branch of the federal government.

His proposed legislation is adapted from Florida's government-in-the-sunshine bill which was approved in 1967.

The Florida senator probably will have major problems getting such legislation approved by his colleagues. We wholeheartedly support the measure and we're hopeful our readers will express their support to their U.S. senators and representatives.

Chiles' timing in introducing the bill is probably the best thing he has going, since our elected federal officials, who have always declared they believe in and support open government, will be forced to either support or reject the Sunshine Law proposal in an election year.

The bill would provide exceptions in matters relating to national security and defense, matters required by other law to be kept confidential, meetings related solely to an agency's internal management and disciplinary proceedings which could adversely affect an individual's reputation.

Those exemptions should give the bill enough flexibility to allow its adoption.

Past proposals calling for "open government" have been shot down by our elected officials, who declare closed meetings are necessary, especially in the area of our national security and defense.

In introducing the legislation, Chiles said, "Since I came to the U.S. Senate last year, I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our federal agencies.

"I'm not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process."

Chiles' words probably will not be popular with his colleagues, but the majority of citizens in this country surely agree with him.

People in this country today feel they are being ignored by the elected officials. That, we think, is why the George Wallace presidential campaign was so successful.

Chiles says government is not responsive enough. He charges there's too little communication, understanding and trust, and he believes a great share of the problem is due to government secrecy. "And," he said, "in most cases, it's totally unnecessary secrecy."

The Sunshine Law has not given Floridians total trust in their elected officials, but it definitely has helped restore honesty to government.

We think a federal Sunshine Law could have the same impact and we salute Sen. Chiles for introducing the bill.

[From the Tampa Times, Aug. 5, 1972]

SUNSHINE IN CONGRESS

Sen. Lawton Chiles made political history a few years ago when he spurned a Cadillac-style campaign for the U.S. Senate seat and chose to walk the roads and residential streets of the state to carry his message to the people.

The voters of the state responded by giving Chiles a thundering majority. His success was so dramatic hundreds of politicians around the nation spent their campaign funds on hiking shoes instead of billboards and prime television time in an effort to follow in Chiles' footsteps.

But now Florida's junior senator has chosen a tougher task for himself—the task of letting a little fresh air and sunshine into the musty committee rooms of the United States Congress.

In a bill filed yesterday, Chiles attempted to pass on the major provision's of Florida's law to the benefit of the people in the United States.

The Chiles bill would require all congressional committees and all federal authorities with the exception of the courts and the military to hold meetings open to the public.

The Florida senator watered down the bill somewhat for the protection of national defense and security, and in certain other highly sensitive areas, but the thrust of the legislation is to give the public a far more open view of the workings of the federal government than is now available.

Not many citizens are familiar with the secretiveness of the federal government in Washington. Most would be shocked to know what a vast amount of legislation is sent to the floors of the house and senate from closed committee rooms. Trading of votes for favors, and compromises not necessarily in the public interest are major factors in the wording of new laws.

Matters are considered in secret session that would appear to have no relation to national security. For instance, during the past few days doors were slammed shut by the Senate Space Committee on a hearing into the smuggling of certain contraband items, by astronauts, on the Apollo 15 trip.

Here is a case where taxpayers spent millions to send these men on a moon mission, and from reports there were plans for a tidy private profit by parties still unknown. After a five hour secret session on the matter the committee chairman, Sen. Clinton P. Anderson, would give no indication if any of the information gathered from witnesses would ever be made public.

Another example: A hearing will be held next Tuesday in "closed executive session" of the powerful Senate Public Works Committee on a bill tailored specifically for Texas permitting the state to circumvent federal environmental safeguards in construction of a controversial freeway through scenic urban parkland. A torrent of similar legislation for

other areas in the nation is expected to follow.

These are only a few examples of the type of information handled by congressional committees behind a shroud of secrecy.

The Chiles bill is only one step needed in a full code of reform for both the legislative and executive branch of federal government.

Optimism about the passage of Chiles bill in the near future could only come from those unfamiliar with the power of the gerontocrats of Capitol Hill.

It took six years, and the defeat of the Porkchop Gang, to get the sunshine law through the Florida legislature. It may take even longer at the federal level. But the change is necessary if confidence in government is to be restored.

Chiles had the courage to set a new style of campaigning in Florida and sparked a dramatic change in many other states. Perhaps other young progressive senators will be willing to follow his footsteps in support of the national sunshine act.

[From the Miami News, Aug. 8, 1972]

RIGHT TO KNOW

We've always been guided by two principles in this business: The public needs to know what is going on, in and out of government; and public representatives need to communicate freely with the public.

Take the latter first. The U.S. Supreme Court recently said a newspaperman no longer has the right to protect the confidentiality of his source of information. This hits close to the heart of a free press. We feel, of course, the news media need and should have maximum legal protection to meet their responsibilities in a free and open society.

Sen. Alan Cranston of California has introduced a one-sentence bill which would restore the privilege that the Court has seen fit to remove. The bill reads: "A person connected with or employed by the news media or press cannot be required by a court, a legislature, or any administrative body to disclose before the Congress or any federal court or agency any information procured for publication or broadcast."

We subscribe to Senator Cranston's proposal because all other press confidentiality laws (17 states have them) to some degree contain loopholes which could lead to repressive restrictions.

No less important is the bill introduced on Friday by Sen. Lawton Chiles of Florida to open all government processes to public view. Mr. Chiles, who strongly supported a "government in the sunshine" statute when he was in the Florida Senate, would have his legislation apply to all federal regulatory agencies and committees of the Congress, exempting only the judiciary and military.

The senator expresses surprise that so much of the public's business is conducted behind closed doors in Washington. He shouldn't be surprised. The federal agencies have practiced it for years and as recent as February of this year, a survey indicated 36 per cent of all congressional committees were meeting in secret.

Government in the sunshine is being practiced with success in the senator's home state. There is no reason for federal bureaucrats to close the doors when the press and the public show up. If the public is losing confidence in government, it is because of being shut out of the decision making process.

A government that operates in secret is on the road to tyranny.

Mr. CHILES. Mr. President, I have also received quite a bit of mail from Floridians, as well as citizens across the country expressing their interest and support.

Mrs. Dorothy Tomlinson of Madeira Beach, Fla., wrote:

Hope that your government in the sunshine for the U.S.A. legislation is adopted. This law would make it easier for the people to choose their leaders.

Mr. Robert W. Burdick of West Palm Beach told me:

Thank you very much for introducing a federal "government in the sunshine" bill in the Senate. We have needed the introduction of such a bill for a long time . . .

Ethel L. Redditt of Tampa wrote:

Congratulations on your trying to bring the people's business out in the open . . .

Mr. President, I ask unanimous consent to have several examples of the kind of letters I received printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JACKSONVILLE BEACH, FLA.,
August 16, 1972.

The HON. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR LAWTON: Just a brief note to let you know how pleased we were to read of your proposing a "Florida in the Sunshine" type bill for our Congress.

I serve on a local hospital board and we have to advise the local press and all concerned in our community of any little meeting that we have. It seems if we have to do this type of thing, there is no reason why the Ways & Means Commitee should not have to do the same, or other Committees that are running our Federal Government.

Thanking you again for the great job you are doing as our Senator.

Very sincerely,
GEORGE E. PHARR, *C.L.U.*

PS: I am enclosing a clipping of the bill I refer to above.

CLEARWATER, FLA.,
August 5, 1972.

DEAR SENATOR CHILES: Would you please send me a copy of your "Gov't in the Sunshine" bill.

I appreciate your efforts for this much-needed reform, and I'm sure that Common Cause and the League of Women Voters here will be interested in supporting your bill.

Thank you.

GERTRUDE DESJARDIN.

DEAR SENATOR CHILES: More power to you in your effort to ban most closed sessions of congressional committees and Federal regulatory agencies. The people are dealing with public business. What have they got to hide?

Sincerely,
Mr. and Mrs. ROBERT E. STEARNS.

BARTOW, FLA.,
August 19, 1942.

Hon. LAWTON CHILES

DEAR SIR: I like the little papers "Lawton Chiles Reports," very much.

This copy has some very pertinent problems.

I like the Sunshine Law very much. I probably will never be in a place to attend any conferences but it gives one a feeling that if I wanted to I could.

I saw in this morning's paper that Rep. Fascell has introduced a bill quite similar to yours. I wish you both success and hope its passage won't be held up 10 years.

I also hope the Mass Transit conference will bring results.

We have visited Disney World from Bartow by bus and it is a nice way to get there.

Yours truly,
MRS. STANTON LANDER.

Mr. CHILES. Mr. President, I am more convinced than ever that there is little case to be made for any secrecy in Government outside of certain special areas dealing with the national defense and security. Our government in Florida is not perfect now by a long shot—but it sure is more open. I do not suffer under any illusions that a Federal Government in the sunshine law is going to erase every trace of public suspicion. But I do believe it will help enormously to open up our system to the people it is supposed to be serving. This opening up cannot help improving the system itself and begin the slow restoration of the public's confidence in their elected representatives and their government as a whole.

No one can deny the feeling of alienation that so many of our citizens feel today toward their Government. It is a kind of social desease that is still spreading. For a variety of reasons people have become suspicious of a Government they feel is all encompassing and yet out of touch with the people it is supposed to be serving. Many people feel that their public trust is being betrayed.

In fact, a recent study by Arthur Miller, a political scientist from Ohio State University, showed that the American people's trust in their Government dropped nearly 20 percent from 1964 to 1970. Using data provided by the University of Michigan's Survey Research Center, Miller devised a "cynicism scale." He found that over this 6-year period, the broad segment of people who were questioned as to their trust in American institutions answered in ways that clearly indicated distrust, alienation, and cynicism.

Mr. President, I ask unanimous consent to have an article published in the Washington Post on September 10, 1972, concerning the Miller study be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TRUST IN GOVERNMENT IS SAID TO DECLINE—CYNICISM RISES

(By H. D. S. Greenway)

The American people's trust in their government dropped nearly 20 per cent from 1964 to 1970, according to Arthur Miller, a political scientist from Ohio State, and public trust among blacks dropped at twice that rate. That segments of the population are alienated from the government is not surprising, Miller said, but he views the rapid degree of change in only six years as "somewhat alarming."

Using data provided by the University of Michigan's Survey Research Center, Miller has devised a "cynicism scale" which he presented Thursday in a paper to the annual

meeting of the American Political Science Association here.

Over a six-year period a broad segment of people was questioned as to their trust in American institutions and their answers were rated as to degree of alienation and cynicism. Twenty per cent of those polled in 1964 distrusted the government but by 1970 the figure had risen to 39 per cent.

During the 1964-1966 period public trust among blacks actually rose, according to the "cynicism scale," while public trust among whites began a steady decline. After 1966, blacks began to lose faith in government more rapidly than whites but prior to 1968 blacks still "demonstrated more trust in the government than whites," Miller said. By 1970 a "reversal" had occurred with (56 per cent of all blacks queried mistrusting the government), as compared to 35 per cent among whites.

American cynics can be broken down into "left cynics" and "right cynics" on the Miller index. Blacks comprised 38 per cent of all "left cynics" and 99.7 per cent of all right cynics were white. "One-third of the cnyics of the left were under 30," Miller said, while only 12 per cent of rightist cynics were young. In general, however, Miller found far more discontented people over 60 than among the under-30 group.

Cynicism cuts across party lines, but while independents are cynical because they see too little difference between the Democrats and Republicans, blacks are cynical because they see too much difference between the major parties. Blacks perceive the policy gap between parties as "so large that the Republican Party is not a viable alternative, thus, ironically, also resulting in a lack of choice for them."

Increasingly Miller found that Americans are satisfied with neither party and the findings "demonstrate emphatically" that "distrust of the government was related to the dissatisfaction with both parties . . ."

A feeling of inability to influence government was also a prime cause of discontent. "Those who felt they had very little impact on government were the most cynical."

While confidence in the electoral system among whites dropped from 65 per cent to 60 per cent during the six-year period, black trust in elections dropped from 66 to 41 per cent.

Mr. CHILES. Mr. President, I believe a good deal of the growing disenchantment with the Government that the Miller study points out is due to the aura of secrecy that surrounds many aspects of it—in most cases a totally unnecessary aura of secrecy. There is, to my way of thinking, no real reason for the number of closed meetings held by Government boards, commissions, or other agencies. I believe closing the doors to these meetings and shutting out the public automatically makes the public wonder what in the world is really going on behind them.

Now I must admit that at the beginning stages of "Government in the Sunshine" back in Florida, I questioned whether or not we could operate effectively out in the open. Many people shared my feelings. But now, after our Government in the sunshine law has been in effect for several years, we share the same proud conclusion: We can operate just fine. In fact, we can operate better because with those open doors also comes the public's confidence. Business goes on as usual—except business goes on even more effectively. It is the public's business that we are talking about and now at last, in Florida, the public is allowed in on it fully.

Mr. President, most public officials are hard-working, dedicated, individuals. But as honest as they are, they still have difficulty keeping the public's trust, eliminating doubt or suspicion concerning their integrity. Closed doors imply "hanky-panky." The credibility of the majority of honest, hard-working public officials is destroyed by the unnecessary aura of secrecy that surrounds many aspects of Government decisionmaking.

My bill provides for open meetings of all Federal governmental agencies except the courts and the military. In particular, it applies to Federal regulatory agencies and commissions, such as the Interstate Commerce Commission, the Federal Trade Commission, and the Civil Aeronautics Board—which are responsible for serving the public interest. It would apply to the committees of Congress also, which have for too long conducted too much of their business behind closed doors.

Mr. President, I was pleased to see that a plank in the Democratic Party platform for this year is concerned with openness in Government and that legislation has now been approved by a Senate-House conference which would open up meetings of the mutitude of so-called advisory commissions. In the Senate this effort was led by Senators METCALF, PERCY, and others. I was glad to join with them in that effort. And I am delighted that some of my Republican colleagues in the Senate have joined me in cosponsoring my sunshine bill. This effort to open up Government to the people is clearly not a partisan issue and I would hope we could work together effectively toward that end.

I am hopeful that hearings will be held on my proposal for sunshine government early next session. And I want to stress that I sincerely hope this whole area will be completely gone into and thoroughly studied. I am and will remain completely committed to the idea of opening up government to the people—the memory of my campaign is still vivid—the memory of listening to the people complain about the "bigness," and the remoteness, the unapproachable nature of big government—how they felt left out and were distrustful of what was going on "inside." But though I am wedded to the idea of sunshine Government I am not wedded to the specific language of my bill—I realize there are problems involved. I am aware that certain exceptions to open meetings have to be made. Exceptions are provided in the bill as written, to include—cases where matters to be discussed include national security, internal management of a committee or agency, or matters which may tend to reflect adversely on the character or reputation of a witness or any other individual. But these exceptions may need expanding, or more precise definition. Complete hearings on this whole area are certainly necessary so that we can have input from everyone involved and come up with the best possible bill.

We must start now—here—to expose our governmental process to the fullest extent possible. We must open the doors and windows and let the disinfecting sunshine in. Our efforts to open up Government to the people can only lead to better lawmaking and greater public confidence in our governmental system.

I am pleased that some of the cosponsors to the bill and other Senators have joined me here this morning to consider some of the issues and problems—as well as challenges involved in Federal "Government in the Sunshine."

Mr. HART. Will the Senator yield?

Mr. CHILES. I yield to the distinguished Senator from Michigan, whom I am delighted to have as a cosponsor on the legislation.

Mr. HART. Mr. President, I join the Senator from Florida in support of S. 3881, a bill he most appropriately has dubbed the "Government-in-Sunshine Act." The Congress has considered this area before. Just in the past several years we have passed the Freedom of Information Act and the Legislative Reorganization Act of 1970—both designed to open up the processes of government to the public.

But these actions are not enough. We still receive complaints that Federal agencies hold back needed information, and certainly the arguments of the past months over classification procedures indicate that the rules are hazy, if indeed they exist at all. And an analysis of the Congress' actions following passage of the 1970 Reorganization Act shows that about one-third of all committee meetings in 1971 were held in secret.

Credibility is surely an overworked word, but describes one attribute that our people are looking for in their Government. In this electronic age of instant communication, secrecy would seem to have no place, except in the most sensitive of areas, which are well-defined in S. 3881. Certainly passage of the bill would help remove suspicions about motives and doubts about integrity existing today. Senator CHILES distinguished public service in heading this effort.

When President Woodrow Wilson addressed the Congress on the great issue of peace, the first of his 14 points was "Open covenants—openly arrived at."

Today in the midst of difficulties abroad and at home, the advice is equally well taken. S. 3881 would enlarge our freedoms and bring increased respect and support to our Government.

I would hope the party caucus in Congress also will be conducted "on the record" and "in the open." Actions by the caucus affect the public's business. We who are members of these caucuses are not operating a fraternity house, we

are doing business for and in ways directly affecting these people, the public. The people should know what we are doing or not doing, in committee and in caucuses.

Mr. President, I express appreciation to the Senator from Florida for undertaking leadership in this effort. In addition to his great ability, he brings to us his rather recent experience, specifically his experience in the Florida Legislature during the period in which he served in that body.

Even some of us who have long felt that the doors should be open to permit the public to know what we are doing in our committees and deciding not to do in our committees would be desirable. Nonetheless, I have an uneasy feeling that perhaps we do not recognize what may be very disabling consequences of that action.

The Senator from Florida (Mr. CHILES) can testify from direct experience that opening the doors does not have adverse serious side effects. Those of us who never served in a body where the doors are literally open would not be able to testify.

It is for this reason, among others, that I am delighted that he is giving leadership and that in doing so is rendering a very significant public service.

I share with him the opinion that the committee will permit us very early in the next session to act. I hope and believe we will act prudently.

I would suggest that perhaps, while it is not a function of the Senate by statute, we consider seriously the proposal that our own party caucuses also be open because what we do or decide not to do in a party caucus affects completely the right of the public to know.

We are not a group sitting around in a caucus trying to run a fraternity house, although one gets the uncomfortable feeling that that is the level at which we operate in our caucuses.

We are about the public business and our performance inside a caucus would be more sensitive and likely to be more responsive if that door also was open.

The bill of the Senator from Florida has enough trouble as it is without adding caucuses to it. I welcome the chance to raise that issue, and I thank the Senator.

Mr. CHILES. I thank very much the Senator from Michigan for his remarks.

Again, I appreciate very much his support. I think one of the problems that he raises in the bill is the problem of education. I can remember well in Florida that when we were first taking up the sunshine bill many of us felt—and I was one of those—that we were just not going to be able to operate efficiently if we were to do everything in the open, that we had better hold some things back. I was thinking, as the rest of them were, about the public interest, as it were. I think everybody in this body really thinks mainly about the public interest. But we found that when we did open meetings up we could operate just as well.

I do not think we will find anybody in Florida in the legislature or basically in government that wants to go back to the old practice, because the side effects of the sunshine legislation are so good that we do not have the leaks that go out to the press. As the Senator knows, we do not now have any secrets in any of these committee meetings. It depends on who leaks the information and how they leak it.

We do not have any secrecy even in our party caucuses, as the Senator knows, because the person leaking it can slant it and often does. That is one of the problems we have. It often proves very embarrassing to Senators and other agencies of government. It happens that way, too.

We would be much better off if those things were public, because if we had a record and if someone were not quoted correctly, he could stand exactly on the record.

Mr. HART. We tend to be very oversensitive and to get mad at the press when we see something reported as occurred in a committee meeting. We ought to get mad at ourselves if the press report is inaccurate, in all probability it is, because we slammed the door in their face.

We would not let them in to see the whole business. Depending on who says what occurred after it is over, that is inevitably the way the press is going to report it.

Mr. CHILES. That often results in public opinion being misguided, because someone is biased or partial and gives his impression of what took place, or his interpretation of an action another Senator took and before long you have a biased public opinion that does not relate to the facts.

Mr. HART. You have a biased public opinion, and a group of Senators, each one looking at another Senator, trying to figure out who is going to distort what he is in the business of doing. That poisons the well.

Mr. CHILES. I hear the remark made as perhaps the Senator does with respect to markup sessions.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

At this time, in accordance with the previous order, the Chair recognizes the Senator from Oregon for not to exceed 15 minutes.

Mr. PACKWOOD. Mr. President, I am delighted to join the distinguished Senator from Florida in the cosponsorship of this measure.

I served in the Oregon Legislature, but I did not have the same experience the Senator from Florida had, because in Oregon such meetings have always been public.

Our constitution in Oregon, which was adopted in 1857, provides:

> The doors of each House (of the Legislature), and of committees of the whole, shall be kept opened, except in such cases as in the opinion of either House may require secresy (sic).

But the custom and usage with respect to the latter clause relating to secrecy never has been used so our meetings always have been open and, therefore, I did not have the Senator's experience where meetings were closed, or wonder what would happen if such meetings had been open to them. As a new legislator I became accustomed to having people present, just as a trial lawyer in open court, and we paid no attention to the fact that people were there listening.

Mr. CHILES. That is true. It did not inconvenience the work done. If it was a markup session people could sit and listen to everything that took place but they did not participate. We took testimony, but certainly there would come a time when public testimony would be closed; you would not hear from the public but they would hear your thoughts and the tradeoffs, and they would know what led to the final votes on the bill, rather than to see an expunged record where the public would not know what happened up to that point. That is what causes suspicion.

Mr. PACKWOOD. The closest State to the State of Oregon is the State of Washington. They had a very powerful rules committee through which all legislation had to be channeled. They would determine in secret session the calendar for the day, and you never knew who voted for a bill or who voted to kill it. They could not understand how any public body could operate in public because they thought that without having the right of being able to shut the people out, the legislators would be afraid to express their opinions.

I keep coming back to the point that once you are used to the banter and the give and take in a closed session, it goes on also in an open session.

Mr. CHILES. I am delighted to have the Senator's experience in Oregon. I am sure things went on just as well in Oregon and with much more public confidence.

Mr. PACKWOOD. It is attributable to the fact that the public knows it has the right to come in. Often they do not exercise that right. Now and then there might be an emotional reaction, but by and large they knew that they could come to the meetings and testify if they wished. They knew they had the right, and that is what was important.

Mr. CHILES. In Florida the sunshine bill opened up all meetings. We found more difficulty in school board meetings in the counties. They are the ones who found no way to operate, in some county and city commissions. Most test cases under the Florida law happened to involve school boards. They had to settle these issues and they had to have votes,

and there were a couple of suits that were actually filed for injunctions against that kind of meeting. Now, they carry on their business just as everyone else.

There is one other thing I want to point out. Florida had a legislature that was less than mediocre when I went there in 1959, controlled by special interests. I think we represented more pine trees than people, and everything about it diminished the public confidence. Florida is now rated by the Citizens Committee on State Legislatures, which did a survey, as third or fourth in the Nation. One of the leading things that brought them that rating was the openness brought about by the sunshine bill. Everybody in Florida is proud of that and one of the chief benefits of the sunshine bill was that it opened up public confidence and revitalized public confidence so that more people like to run for the State legislature because it is something not held in great disrepute as it once was, and there is something interesting about participation.

Mr. PACKWOOD. I was glad to hear the Senator's colloquy with the Senator from Michigan (Mr. HART) about what leaks out of a meeting when a meeting is closed, and if something is reported by the press maybe they slant it because they do not know what happened.

In the 3½ years I have been here I do not believe that in any secret session any single thing has even been done in committee that would not have been done if the doors had been wide open and loudspeakers were blaring the proceedings out into the hallways.

Mr. CHILES. I am glad to hear the Senator's experience in that regard. In the time I have been here it has been beyond me why I was in a closed session and what was the reason or the need for the closed session because I never saw anything done that could not have been done in public. It creates a distrust that we bring upon ourselves, when there is no reason for it.

I am certain that there are times when the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations deal with sensitive areas in regard to the national interests of our country, and those meetings should be closed. We certainly are allowing that to happen. I do not touch that, or anything that deals with sensitive security issues. But why in the Committee on Agriculture we close the doors during the markup of a bill is beyond me. It is beyond me why that is necessary because there is nothing secret.

Mr. PACKWOOD. It brings on a feeling of frustration because what you are doing is so important you wish people could hear and see what you are doing because you regard it as of monumental significance. When the doors are open, still no one comes in except one or two people from the press who come to cover it.

Mr. CHILES. That is true. In the Committee on Government Operations we were dealing with the consumer protection bill. From that meeting there came news stories or comments made about the statements of several Senators that were incorrect, and which did a disservice to those Senators. Had the meeting been open so members of the press could have viewed their actions, Senators would never have had the comments made about them that were misinterpreted and which worked a disservice on the Senators and their image because it was not fair.

Mr. PACKWOOD. On two occasions since I have been here, when we had oral yea and nay votes in committee, I had my vote misrepresented in the press. It was not deliberate. I am sure someone asked, "How did the vote go?" and somebody said, "The vote was 9 to 6," and they got the vote mixed and I was shown as being on the opposite side that I actually voted on, because people could not see for themselves.

Mr. CHILES. Those are things that work to the disadvantage when hearings are closed.

Mr. PACKWOOD. I am delighted to have a chance to join the Senator from Florida in cosponsoring the bill.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. CHILES. The Senator from Oregon has the floor.

Mr. PACKWOOD. I yield.

Mr. PROXMIRE. I simply want to commend the Senator from Florida and the Senator from Oregon on the position they have taken that we have a greater public disclosure of our committee sessions, and especially the critical markups.

There are only two reasons I can think of that would justify secrecy: No. 1, where it affects the national security; and, No. 2, where it would affect the reputation of a particular individual when that is to be discussed in detail and where certain information had been brought out that could not yet be confirmed. But the overwhelming majority of markups should certainly be open and public.

The Senator from Oregon (Mr. PACKWOOD) and I serve together on the Banking, Housing and Urban Affairs Committee. I cannot remember a single executive session that could not have been open to the public with greater public understanding and greater public information and I think probably greater public interest.

What I have heard discussed between the Senator from Florida and the Senator from Oregon with respect to misrepresentation of activities of the committee members is true. That committee, like all committees, has considerable pressures imposed on it. There have been reports with respect to members of it that were inaccurate and which unfavorably affected that member. If the press could have participated and heard the discussions and observed the votes on the various amendments—the most critical operation in the whole committee process—this erroneous impression could not have taken place.

The reason we do not do that is the result simply of inertia and because it has not been brought before the Congress for action before. I am so glad that two relatively young Senators have had the initiative and the courage to do this.

Mr. PACKWOOD. I may ask the Senator from Wisconsin a question. How long has he been on the Banking, Housing and Urban Affairs Committee?

Mr. PROXMIRE. 15 years.

Mr. PACKWOOD. Can the Senator recall anything the committee ever did that could not have been done in the open?

Mr. PROXMIRE. I certainly cannot. We have no jurisdiction with respect to national security or foreign policy. We have some very limited jurisdiction with respect to emergency stockpiles, and so forth, but that information could be made public. No, I cannot think of any instance whatsoever, including the discussions of confirmations of individuals, because these have been the kinds of discussions which would have been perfectly all right to have made public.

Mr. SYMINGTON. Mr. President, will the Senator yield?

Mr. PACKWOOD. I yield.

Mr. SYMINGTON. I would join my colleagues from Wisconsin, Florida, and Oregon in protesting the degree of secrecy now characteristic of our Government. In the years I have been in the Senate, it has become ever more clear, especially in the field of national defense, that we have wasted and are wasting literally billions of dollars, much of which is secrecy, primarily because of excess in the nuclear field; secrecy that is wholly unwarranted. There is no reason why the American people should not know more about why this great new force has changed, or should have changed, any informed concept of how to defend the United States. We all know the ease and celerity with which we could use domestically the billions of dollars that could be saved in the defense field and much of that saving could be accomplished if we would eliminate all this unnecessary secrecy.

It is my understanding this is going to be talked about later this morning, but I would join the Senator from Wisconsin (Mr. PROXMIRE) in commending the Senator from Florida (Mr. CHILES) and the Senator from Oregon (Mr. PACKWOOD) for bringing this matter to the attention of the Senate. This whole idea of excess secrecy, whether for patriotic or political or whatever gain, is becoming a curse on the American system.

Mr. PACKWOOD. I appreciate that.

If the Senator from Missouri, with the perspective he has because of his background as a former Secretary of the Air Force and now, for years, as a member of the Armed Services Committee, and one of its very distinguished members, believes we could have saved money if we had held open hearings, if he can say that with his experience, if he can say that with the experience he has had, then there certainly could not be, exept in a very few cases, any justification for closing these hearings at all.

Mr. CHILES. Mr. President, I am delighted to have the remarks of the distinguished Senator from Wisconsin and the distinguished Senator from Missouri. I think it points up again that we are operating because of habit and inertia, as the Senator from Wisconsin has pointed out, and the idea that because we have always done it this way, we should continue to. I think the problem is one of education—to have everyone really look at and to weigh the effect of continuing in that habit, continuing in the old way against what we see is the greatest problem facing us in the country today, and that is the alienation of people toward their Government. Anything we can do to change that I think is the major role of one in public office to try to change, and certainly a major role of one in the Senate.

The hallowed tradition of the Senate has been that this body has always been the one that in this country has had the confidence of the people over the years; that it provided for stability, and provided for leadership, and was a check on the executive. I think now we are operating from our past status, perhaps, but we are not challenging today and the problems in the country today, and if the Senate is going to continue to live up to any of that tradition, then it must look at the facts of today and what is the feeling of the vast multitudes of our people.

Mr. PACKWOOD. I think we can look right around here at the way we conduct our business on the floor of the Senate. I can only think of two instances in 3½ years when we closed the doors of the Chamber. One dealt with the ABM question. The Senator from Missouri very ably led the opponents in that debate. We had a closed session then. I can think of one other, in those 3½ years, which was a matter dealing with national security. All other times the sessions of the Senate have been open to the galleries. I do not know why the committees cannot operate that way.

Mr. CHILES. I can recall one closed session which we might have been much better off if it had not been closed.

ROTH. Mr. President, I wish to commend the junior Senator from Florida for his contribution to open Government. Governmental secrecy is a problem to which I have given considerable thought myself. My efforts have been directed toward establishing a Commission on Executive Secrecy to review classification acts and practices and make recommendation for reforms, and toward providing that meetings of agency and presidential advisory committees be open to the public.

I think that one of the great merits of S. 3881, the legislation that is being offered by the Senator from Florida, is that it reminds us that secrecy is more than an executive branch problem and that it hides from public view not just documents, but processes of Government as well. S. 3881 would limit secrecy in both the executive and the legislative branches by requiring that all meetings and hearings of governmental agencies and congressional committees would have to be open to the public except for certain reasons defined by law. A further contribution of this legislation is that it requires notice of meetings and provides that transcripts must be available to the public.

I would like to address more specifically the question of congressional secrecy, because too often we in Congress tend to view secrecy in Government—and its attendant credibility gaps—as problems originating with and largely confined to the executive branch. But, this is not true. It has become almost an established rule of thumb that all committee business, except for hearings, be conducted in executive session. This practice closes to the citizens of this country a crucial part of the work of their Congress, because in executive sessions compromises are made, the language of bills is changed, and votes are taken which any determine whether the bill is ever brought to the floor. And, in fact, it is not just the meetings of the committees that are restricted, but almost all other aspects of committee work as well.

There are, of course, reasons why these practices have grown up and been maintained. Legislators feel the need for having a relatively apolitical atmosphere, away from the lobbyists, and conducive to the efficient and objective consideration of legislation. Thus, despite the 1970 Legislative Reform Act, the Congressional Quarterly estimated that last year 97 percent of Senate business meetings were closed to the public.

Unfortunately, committee secrecy opens the opportunity for a number of abuses contrary to the spirit of democratic procedure. A minority in powerful committee positions can sit on legislation they oppose in committee or engage in delaying tactics shielded from the purview of the media and public. Bills can be held in committee almost until they are ready for floor action, telescoping the opportunity available for legislators who are not on the committee to study the legislation. Secrecy may give an advantage to special interest groups who have the resources to keep informed on the proceedings on a bill through friends on the committee staff.

Finally, the use of secrecy provides an opportunity for the selective and biased release of news on committee business through leaks. In a recent case involving a committee on which I serve, supporters of a particular piece of legislation leaked distorted stories about the activities of the opponents to the press. Because the committee had been in executive session, there was no way that the media could corroborate the reports being given to them. I deplore this tactic, even though I was a supporter. This illustrates the possibility that ineffective secrecy may be worse than effective secrecy. The public is not merely uninformed, it is misinformed.

Mr. President, the effective and equitable working of democracy requires an accurately informed electorate. The dilemma of secrecy involves striking a practical balance between this need and the requirements of committee secrecy for certain instances. The bill offered by the Senator from Florida offers four guidelines for which secrecy may be maintained: These are for matters involving national security, the internal management of a committee or agency, the reputation of an individual, and other business for which secrecy is required by law. This is the proper approach. We should define those areas which must be secret and then insist that everything else should be public.

I must confess, however, that I am still unsure what the practical implications of the language of S. 3881 would be. I should like to hear more about how similar legislation has worked out in Florida and California, and I would like to know more about how this legislation would affect the executive departments. I hope therefore that the Committee on Government Operations will expeditiously proceed to have hearings on this legislation as well as other legislation along this line. The issues, however, are extremely complex, and I am not at all certain that the secrecy in Government dilemma can be handled adequately in the Congress without the active participation of experienced members of the executive branch, the media, and the public. This is why in S. 3787 the senior Senator from North Carolina and I proposed a 6-month Commission to deal with executive secrecy thoroughly and make recommendations to the Congress. Maybe such a Commission could be expanded to include the matters that have been so ably presented by the Senator from Florida, should such a course turn out to be desirable.

In closing I wish once again to commend the Senator from Florida for this legislation. It is good legislation, important to the American people and deserving of our utmost attention.

Mr. RIBICOFF. Mr. President, I want to express my personal support for S. 3881 which has been introduced by Senator

CHILES. That bill provides that meetings of Government agencies and of congressional committees shall be open to the public. I have long been a supporter of the principle that the operations of government should be opened as fully as possible to the purifying effects of public light. Very often the intricacies of government seem to be hidden behind a veil of confusion simply because critical meetings and sessions of various governmental units are closed to the public. The later reports of what went on at the meeting of any public body are often not complete. Such meetings usually involve good faith attempts to solve the complex problems which public officials in all branches of government face. If the meetings were open to the public we could eliminate all confusion concerning what actually happens and increase public understanding and support for public institutions. This bill will create the vehicle for introducing the purifying effects of public light into all meetings of Federal agencies and congressional committees.

As a member of the Committee on Government Operations I look forward to working with Senator CHILES in drafting and securing passage of this legislation.

I have had the pleasure this session of working with the distinguished junior Senator from Florida on the Committee on Government Operations. His concern for making the machinery of government more responsive to the needs and demands of the individual citizen is quite commendable. His work on legislation to create the Consumer Protection Agency provided wise counsel, and the benefit of his vast experience in government at all levels was invaluable. In the executive committee sessions, as that legislation began to take its final form, his comments and amendments were extremely useful. Much of the strength of that legislation can be traced to his suggestions in those committee sessions. In addition, his support for the underlying concepts of the legislation was helpful in explaining the bill. He is truly an example of the ideal in public officials who are responsive to the expectations of the individual citizens.

The continuous aim of such public officials is to see that the governmental machine functions as smoothly as possible, and equally to try and insure that the public citizen understands how the Government functions. This is essential if the individual citizen is to feel that he has an opportunity to affect the operation of his Government. My hope is to begin to take up hearings on this bill at the earliest opportunity in the coming session and to produce visible results.

The concept which Senator CHILES hopes to bring from his home State to Washington is quite encouraging. I think that it is but another example of ways in which the Federal Government can be improved by practices and procedures delocal level. I have no doubt that the experience which Senator CHILES has had with open governmental practices in Florida will be of invaluable assistance as we transplant the process to Washington soil. I again congratulate the distinguished Senator from Florida and repeat my enthusiasm as I look forward to working with him in developing this legislation.

I would like to add that the approach which S. 3881 reflects in its attempt to open the operations of government to the public is very much like that which has been developed in S. 3970, which Senator PERCY and Senator JAVITS and I have sponsored. The aim of that legislation is also to make the operations of government more responsive to the public by the creation of a public advocate for consumer interests. I am encouraged that such legislation as these two bills is being developed to make the Government responsive and comprehensible to the public.

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PROCEEDINGS AND DEBATES OF THE 94th CONGRESS, FIRST SESSION

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Senate

By Mr. CHILES (for himself, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. CLARK, Mr. CRANSTON, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. MATHIAS, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. WEICKER, Mr. STONE, Mr. GARY W. HART, Mr. NELSON, Mr. PHILIP A. HART, and Mr. HASKELL):

S. 5. A bill to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes. Referred to the Committee on Government Operations.

Mr. CHILES. Mr President, in January 1973, I introduced S. 260, the Federal Government in the Sunshine Act. The purpose of this bill is to provide for more public access to the work of the legislative and executive branches of Government by making most meetings of congressional committees and Federal agencies open to all interested persons.

Since the introduction of the bill, we have had a conference cosponsored by Common Cause and two rounds of hearings at which a number of agency officials and Members of Congress testified. After each discussion on the bill, we considered the many thoughtful suggestions and made revisions to reflect the most discerning of them.

The bill that I am reintroducing today as S. 5, is, therefore, a much more refined bill, a bill which has been carefully examined by many of the people who will be affected by its passage.

Support for the bill within the Senate has been encouraging. The concept of opening up congressional markup sessions and conferences has been overwhelmingly accepted by the Democratic conference. Last Congress, we had 26 cosponsors for the bill. This Congress we hope to have even more.

Secrecy in Government has become synonymous, in the public's mind, with deception by the Government. While some matters must be discussed in closed session, these are few and are specifically provided for in the bill, to insure that the bill itself will not become a shield behind which Government can hide its deliberations from the people.

The experience we have had with open meetings in the 93d session shows that committees can work as effectively or more effectively in the public. For the past 2 years the Government Operations Committee, the Banking, Housing, and Urban Affairs Committee, and the Interior Committee have held open markup sessions. They have dealt effectively and openly with such important, and often controversial, legislation as the Congressional Budget and Impoundment Control Act of 1973, the Energy Reorganization Act of 1973, Federal Regulation of Lobbying Amendments, the Housing and Community Development Act of 1974, control of export-import banking, energy allocation, land use policy, Executive privilege, consumer protection, surface mining, and mineral leasing.

I hope that the Senate will act on the bill this Congress. With the public so keenly aware these days of the things that can go wrong in the governmental decisionmaking process, it is incumbent upon the Senate to show them that we are willing to eliminate the practices which foster wrong decisions.

Mr. President, I ask for unanimous consent to have the bill printed in full at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government.

SEC. 3. DEFINITIONS.—For purposes of this Act—

(1) "National defense" means—

(A) the protection of the United States and its military forces against actual or potential military attack by a foreign power;

(B) the obtaining of foreign intelligence information deemed essential to the military defense of the United States or its forces;

(C) the protection of information essential to the military defense of the United States or its forces against foreign intelligence activities; or

(D) the protection, to the extent specifically found necessary by the President in writing, of the United States against overthrow of the Government by force; and

(2) "Person" includes an individual, partnership, corporation, associated governmental authority, or public or private organization.

TITLE I—CONGRESSIONAL PROCEDURES

SEC. 101. SENATE COMMITTEE HEARING PROCEDURE.—(a) The Legislative Reorganization Act of 1946 is amended—

(1) by striking out the third sentence of section 133(b);

(2) by striking out subsections (a), (b), and (f) of section 133A;

(3) by adding after section 133B the following:

"OPEN SENATE COMMITTEE MEETINGS

"SEC. 133C. (a) Each meeting of each standing, select, or special committee of the Senate, or subcommittee thereof, including meetings to conduct hearings, shall be open to the public: *Provided*, That a portion or portions of such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by a vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(b) Each standing, select, or special committee of the Senate, or subcommittee thereof, shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the committee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript shall be made of each meeting of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of subsection (d) in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it

determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of each such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(e) A point of order may be raised in the Senate against any committee or subcommittee vote to close a meeting to the public pursuant to subsection (a) of this section, or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section, by committee or subcommittee members comprising one-fourth or more of the total number of members of such committee or subcommittee present and voting for or against such action. Any such point of order shall be raised in the Senate within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the President pro tempore, the leader of the majority party, and the leader of the minority party. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section, or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee shall report to the Senate within five calendar days (excluding days where the Senate is not in session) a resolution containing its findings. If the Senate adopts a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Committee on Meetings shall not be subject to the provisions of subsection (a), (b), (c), or (d) of this section."

(b) Subsection (a) of subsection 242 of the Legislative Reorganization Act of 1970 is repealed.

(c) Paragraph 7(b) of Rule XXV of the Standing Rules of the Senate is repealed.

(d) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:

"133C. Open Senate committee meetings.".

SEC. 102. Clause 27(f)(2) of Rule XI of the Rules of the House of Representatives is amended to read as follows:

"(2)(A) Each meeting of each standing, select, or special committee or subcommittee, including meetings to conduct hearings, shall be open to the public: *Provided*, That a portion or portions of such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(i) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(ii) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(iii) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(iv) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(v) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(I) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(II) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(B) Each standing, select, or special committee or subcommittee shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the committee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(C) A complete transcript shall be made of each meeting of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in paragraph (D), a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of paragraph (D), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(D) In the case of meetings closed to the public pursuant to subparagraph (A), the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subparagraph (C), portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of material specified in subsection (1), (ii), (iii), (iv), or (v) of subparagraph (A). A separate vote of the committee or subcommittee shall be taken with respect to the transcript of such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in subsection (i), (ii), (iii), (iv), or (v) of subparagraph (A). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(E) A point of order may be raised against any committee or subcommittee vote to close a meeting to the public pursuant to subparagraph (A), or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subparagraph (D), by committee or subcommittee members comprising one-fourth or more of the total number of the members of such committee or subcommittee present and voting for or against such action. Any such point of order must be raised before the entire House within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the Speaker of the House of Representatives, the majority leader, and the minority leader. The select committee shall report to the House within five calendar days (excluding days where the House is not in session) a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy.

"(F) The Select Committee on Meetings shall not be subject to the provisions of subparagraph (A), (B), (C), or (D) of this section."

SEC. 103. (a) JOINT AND CONFERENCE COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(3) of this Act, the following new section:

"OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. (a) Each meeting of each joint committee and each subcommittee thereof, and each committee of conference shall be open to the public: *Provided*, That a portion or portions of such meetings may be closed to the public if the committee determines by vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(b) Each joint committee, subcommittee, and committee of conference shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the com-

mittee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript shall be made of each meeting of each joint committee, subcommittee, and committee of conference (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of subsection (d), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the joint committee, subcommittee, or committee of conference may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of each meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(e) A point of order may be raised against any committee vote of a joint committee, subcommittee, or committee of conference to close a meeting to the public pursuant to subsection (a) of this section, or any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section by committee or subcommittee members comprising one-fourth or more of the total number of the members of such committee or subcommittee present and voting for or against such action. Any such point of order shall be raised in either House within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Joint Committee on Meetings consisting of the President pro tempore of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders from each House. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section, or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee shall report to both Houses a concurrent resolution within five calendar days (excluding days where either House is not in session) containing its findings. If both Houses adopt such a resolution finding that the committee vote in question was not in accordance with the relevant subsection, they shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public, or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Joint Committee on Meetings shall not be subject to the provisions of subsection (a), (b), (c), or (d) of this section."

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"133D. Open joint and conference committee meetings.".

SEC. 104. EXERCISE OF RULEMAKING POWER.—The provisions of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE II—AGENCY PROCEDURES

SEC. 201. (a) This section applies, according to the provisions thereof, to any agency, as defined in section 551(1) of title 5, United States Code, where the body comprising the agency consists of two or more members. Except as provided in subsection (b), all meetings (including meetings to conduct hearings) of such agencies, or a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting consists of any procedure by which official agency business is considered or discussed by at least the number of agency members (or of members of a subdivision of the agency authorized to take action on behalf of the agency), required to take action on behalf of the agency.

(b) Subsection (a) shall not apply to any portion or portions of an agency meeting where the agency determines by a vote of a majority of its entire membership, or, in the case of a subdivision thereof authorized to take action on behalf of the agency, a majority of the membership of such subdivision, that such portion or portions of the meeting—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy the United States;

(2) will relate solely to individual agency personnel or internal agency office management and administration or financial auditing;

(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting this paragraph shall not apply unless the witness requests in writing that the meeting be closed to the public;

(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, (E) endanger the life or physical safety of law enforcement personnel; or (F) in the case of an agency authorized to regulate the issuance or trading of securities, disclose information concerning such securities, or the markets in which they are traded, when such information must be kept confidential in order to avoid premature speculation in the trading of such securities; or

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person;

(6) will relate to the conduct or disposition (but not the initiation) of a case of adjudication governed by the provisions of the first paragraph of section 554(a) of title 5, United States Code, or of subsection (1), (2), (4), (5), or (6) thereof.

A separate vote of the agency members, or the members of a subdivision thereof authorized to take action on behalf of the agency, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the agency shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

(c) Each agency shall make public announcement of the date, place, and subject matter of each meeting, and whether open or closed to the public, at least one week before each meeting. Such announcement shall be made unless the agency determines by a vote of the majority of its members, or in the case of a subdivision thereof authorized to take action on behalf of the agency, a majority of the members of the subdivision, that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity.

(d) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting of each agency (whether open or closed to the public). Except as provided in subsection (e) of this section a copy of the transcript or electronic recording of each such meeting, together with any official minutes of such meeting, shall be made available to the public for inspection, and additional copies of any such transcript, minutes, or recording (or a copy of a transcription of the electronic recording), shall be furnished to any person at the actual cost of duplication or transcription. Notwithstanding the provisions of subsection (e), in the case of meetings closed to the public, the portion of such transcript made available for public inspection or electronic recording shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidental source, or endanger the life or physical safety of law enforcement personnel.

(e) In the case of meetings closed to the public pursuant to subsection (b) of this section, the agency may delete from the copies of transcripts, electronic recordings, and minutes made available or furnished to the public pursuant to subsection (d) of this section, those portions which the agency determines by vote of a majority of its membership consist of materials specified in paragraph (1), (2), (3), (4), (5), or (6) of subsection (b) of this section. A separate vote of the agency shall be taken with respect to each transcript, electronic recording, or minutes. The vote of each agency member participating in such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the meeting transcript, electronic recording, and minutes made available to the public, the agency shall supply a full written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), (5), or (6) of subsection (b). The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting (including those portions deleted from copies made available to the public), for a period of at least two years after such meeting, or until one year after the conclusion of any proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within three hundred and sixty days after the enactment of this Act, following consultation with the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) inclusive of this section. Such regulations must, prior to final promulgation, receive the approval in writing of the Assistant Attorney General, office of Legal Counsel, certifying that in his opinion the regulations are in accord with the requirements of this section. Any citizen or person resident in the United States may bring a proceeding in the United States Court of Appeals for the Dis-

trict of Columbia Circuit—

(1) to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein; or

(2) to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) inclusive of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (a) through (e) inclusive of this section by declaratory judgment, injunctive relief, or otherwise. Such actions shall be brought within sixty days after the meeting whose closing is challenged as a violation of this section: *Provided*, That if public notice of such meeting was not provided by the agency in accordance with the requirements of this section, such action shall be brought within sixty days of such meeting or such public announcement, whichever is the later. Such actions shall be brought against an agency and its members by any citizen or person resident in the United States. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the agency to sustain its action. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned a hearing and trial at the earliest practicable date and expedited in every way. In deciding such cases the court may examine any portion of a meeting transcript or electronic recording that was deleted from the publicly available copy and may take such additional evidence as it deems necessary. Among other forms of equitable relief, including the granting of an injunction against future violations of this section, the court may require that any portion of a meeting transcript or electronic recording improperly deleted from the publicly available copy be made publicly available for inspection and copying, and, having due regard for orderly administration and the public interest, may set aside any agency action taken or discussed at an agency meeting improperly closed to the public. The jurisdiction of the district courts under this subsection shall be concurrent with that of any other court otherwise authorized by law to review agency action. Any such court may, at the application of any person otherwise properly a party to a proceeding before such court to review an agency action, inquire into asserted violations by the agency of the requirements of this section and afford the relief authorized by this section in the case of proceedings by district courts.

(h) In any action brought pursuant to subsection (f) or (g) of this section, the reasonable costs of litigation (including reasonable fees for attorneys and expert witnesses) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate. In the case of apportionment of costs against an agency or its members, the costs may be assessed by the court against the United States.

(i) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 202. Title 5 of the United States Code is amended by adding after section 557 the following:

"EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING

"SEC. 557A. (a) DEFINITIONS.—For purposes of this section—

"(1) 'Ex parte communication' means a communication relevant to an on-the-record agency proceeding where such communication is not made on the record, or openly at a scheduled hearing session in such proceeding, and reasonable notice thereof is not given to all parties to, or intervenors in, such proceeding.

"(2) 'Interested person' means any person (including a member or employee of any Government agency or authority) other than a member or employee of the agency before which the on-the-record proceeding is pending who communicates with an agency member or employee with respect to any such on-the-record agency proceeding.

"(3) 'On-the-record agency proceeding' means any proceedings before any agency where the agency action, or a portion thereof, is required by law to be determined on the record after an opportunity for an agency hearing.

"(b) This section applies to any on-the-record agency proceeding.

"(c) In any agency proceeding which is subject to subsection (b) of this section—

"(1) no interested person shall make or cause to be made to any member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding any ex parte communication;

"(2) no member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding shall make or cause to be made to an interested person any ex parte communication;

"(3) a member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding, who receives a communication in violation of this subsection, shall place in the public record of the proceeding—

"(A) any written material submitted in violation of this subsection; and

"(B) a memorandum stating the substance of each oral communication submitted in violation of this subsection; and

"(C) responses, if any, to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon obtaining knowledge of a communication in violation of this subsection prompted by or from a party or intervenors to any proceeding to which this section applies, the agency members or member, the administrative judge, or employee presiding at the hearings may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party or intervenors to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation.

"(d) The prohibitions of this section shall not apply—

"(1) to any proceeding to the extent required for the disposition of ex parte matters as authorized by law;

"(2) to any written communication from persons who are neither parties or intervenors to the proceeding, nor government officials acting in their official capacity, where such communications are promptly placed in the public docket file of the proceedings.

"(e) The prohibitions of this section shall apply at such time as the agency shall designate, having due regard for the public interest in open decisionmaking by agencies, but in no case shall they apply later than the time at which a proceeding is noticed for hearing. If the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions of this section shall apply at the time of his acquisition of such knowledge. In the case of any person who files with an agency any application, petition, or other form of request for agency action, the prohibitions of this section shall apply, with respect to communications with such person, commencing at the time of such filing or at the time otherwise provided by this subsection, whichever occurs first.

"(f) Every agency notice of an opportunity for participation by interested persons in a hearing shall contain a statement as follows:

"(1) if such notice relates to an on-the-record agency proceeding, it shall state that the proceeding is subject to the provisions of this section with respect to ex parte communications;

"(2) if such notice relates to an agency proceeding not on-the-record, it shall state that the proceeding is not subject to the provisions of this section with respect to ex parte communications.

If a notice of hearing with respect to any proceeding before an agency fails to comply with this section, the proceeding shall be deemed to be an on-the-record agency proceeding for purposes of ex parte communications.

"(g) Each agency subject to the requirements of this section shall, within three hundred and sixty days after the enactment of this section, following consultation with the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment, promulgate regulations to implement the requirements of this section. Any citizen or person resident in the United States may bring a proceeding in the United States Court of Appeals for the District of Columbia Circuit—

"(1) to require any agency to promulgate regulations if the agency has not promulgated such regulations within the time period specified; or

"(2) to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of this section, and to require the promulgation of regulations that are in accord with this section.

"(h) Nothing in this section shall be construed to permit any communication which is prohibited by any other provision of law, or to prohibit any agency from adopting, by rule or otherwise, prohibitions or regulations governing ex parte communications which are additional to, or more stringent than, the requirements of this section.

"(i) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (c) and (e) of this section by declaratory judgment, injunctive relief, or otherwise. The action may be brought by any citizen of or person resident in the United States. The action shall be brought in the district wherein the plaintiff resides or has his principal place of business, or where the agency in question has its headquarters. Where a person other than an agency, agency member, administrative judge, or employee is alleged to have participated in a violation of the requirements of this section, such person may, but need not, be joined as a party defendant; for purposes of joining such person as a party defendant, service may be had on such person in any district. Among other forms of equitable relief, the court may require that any ex parte communication made or received in violation of the requirements of this section be published, and, having due regard for orderly administration and the public interest, may set aside any agency action taken in a proceeding where the violation occured. The jurisdiction of the district courts under this subsection shall be concurrent with that of any other court otherwise authorized by law to review agency action. Any such court may, at the application of any person otherwise properly a party to a proceeding before such court to review an agency action, inquire into asserted violations by the agency of the requirements of this section, and afford the relief authorized by this section in the case of proceedings by district courts.

"(j) In any action brought pursuant to subsection (g) and (i) of this section, cost of litigation (including reasonable fees for attorneys and expert witnesses) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate."

SEC. 203. This title and the amendments made by this title do not authorize withholding of information or limit the availability of records to the public except as provided in this title. This title does not authorize any information to be withheld from Congress.